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CURRENT TOPICS

Judges' Pensions

A CONTRIBUTORY pensions scheme for widows and children of judges and certain other judicial officers is proposed in the Administration of Justice (Pensions) Bill, introduced in the House of Commons by the ATTORNEY-GENERAL. The new scheme provides for the reduction by one-quarter of the pensions that would at present be payable to those serving in any of the offices affected. In exchange for the reduction a lump sum may be granted on retirement or earlier death. All those appointed in future will be bound by the new scheme, as will also those at present serving unless they elect to retain their present pension rights or accept the revised method of payment without the widows' and children's scheme. Officers who have retired are not affected by the Bill. The net cost to the Exchequer may be about £10,000 in the first year but after at least thirty years it may rise to about £40,000, with a corresponding charge of £2,000 on local funds for the officers pensioned by local authorities.

The Landlord and Tenant (Rent Control) (Amendment) Regulations, 1950

THE Landlord and Tenant (Rent Control) Act, 1949, provided, *inter alia*, for the determination by rent tribunals of standard rents which had been fixed by a first letting since 1st September, 1939; that is to say, if they find the reasonable rent to be less than the figure so fixed, the amount found to be reasonable replaces that of the first rent. Applications can be made by either landlord or tenant. Obviously, the value of the reversion in a dwelling-house within the Act may be reduced by such a determination (there is no increase in standard rent if the reasonable rent should be found to exceed it), but under the regulations issued in 1949 there was no provision giving mortgagees, superior landlords, etc., a *locus standi*. The effect of the above-mentioned amending regulations, which came into force on 16th November, is to remedy this; the written applications to determine reasonable rent must now give not only the names and addresses of the parties to the tenancy, but those of any other persons known to the applicant as having an interest in the dwelling-house which would be affected, etc., and the tribunal is to notify such and give them the same rights to take part in the proceeding as the respondent who is a party to the proceeding. That respondent is, moreover, now called upon to supply the names and addresses of any other party known to *him* to have such an interest, who will of course be given similar information and facilities. Most applications are, of course, made by tenants, who are often unaware of the existence of interests other than their landlords'; the Minister is to be congratulated accordingly on his forethought in providing for this eventuality.

Compensation for Loss of Development Rights

PROPOSED amendments to the Town and Country Planning Acts are put forward by the Federation of British Industries

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in a statement issued on 13th November, 1950. The distribution of a fixed and arbitrary sum of £300,000,000 as compensation for loss of development rights should be replaced by a "development value certificate," according to these proposals. Certificates would be issued to landowners for the amount of the development value of the land at the date of the passing of the Acts. At each subsequent development the development charge would be assessed and set off against the development value recorded on the certificate. No development charges would be payable in cash until the development value of the land had been absorbed in this way. Certificates should be realisable in cash where permission to develop was refused. The statement criticises the present development charges, levied at 100 per cent. of the increase in land values resulting from development, as a serious deterrent to development, and proposes that the percentage should be lowered. The statement also recommends a thorough review of the procedure that requires a firm to satisfy a series of five independent authorities as to their projects. Comment is also made upon the reluctance of planning authorities to grant "consents to develop" for a sufficiently long period to make such developments commercially sound.

Sir Arthur fforde on Professional Courage

An address by Sir Arthur fforde to the Chartered Accountants' Students' Society, on 12th October, deserves the attention of solicitors. Sir Arthur's varied career, as a partner in the well-known firm of solicitors, Messrs. Linklaters and Paines, as a member of the Council of The Law Society, as Under-Secretary to the Treasury during the war, and now as Headmaster of Rugby, lends point to whatever he has to say on professional matters. He said: "To belong to a body of professional men who have their own standards and their own mutual respect for each other is the kind of thing which may help you when you come up against those situations—which all professional men do come up against—where, apart from a clear understanding and mastery of the art, one needs two things: one is courage—for it is not so easy always to stand up to a powerful client—and the other is the sense that, beside one, are men who see why courage is a right thing, and will stand by one when one has to exercise that courage." "Both the professions of law and accountancy," he added in conclusion, "are partly sciences, partly arts, and partly mysteries." If courage is necessary in our profession, it is no doubt supplied by those who brave its mysteries in their apprenticeship days, thereby learning how to be courageous.

The Manchester and Salford Poor Man's Lawyer Association

In their report for the year which ended on the 31st March, 1950, the committee of the Manchester and Salford Poor Man's Lawyer Association analyse the proportion of cases falling under different branches of law. The greatest proportion consisted of matrimonial and family cases (45 per cent.); landlord and tenant cases were 13 per cent.; damage and accident cases 7 per cent.; industrial injuries cases 8 per cent.; wills and intestacies 4·5 per cent., and libel and slander cases 5 per cent. Upon the announcement that the legal advice provisions of the Legal Aid and Advice Act would not come into force for some time the honorary treasurer appealed for financial help to solicitors who were not then subscribing, and the response was most gratifying. The Association also made their first application to the Manchester Corporation for a grant under s. 136 of the Local Government Act, 1948, and the committee record with thanks the receipt of the sum of £50. Among other interesting information in the report it is stated that, although the Principal Divorce Registry will inform any inquirer whether, at the date of the inquiry, a decree absolute has been made in respect of a particular person, and will also indicate which registry will (for a fee of 7s. 6d.) supply a copy of the decree, in an undefended case no notice about the granting of a decree *nisi*, or about the application for or the granting of a decree absolute, need be given to the other spouse. The committee are grateful to an honorary adviser who took this question up with his Member of Parliament, as a result of which it has been referred to the Supreme Court Rule Committee to consider whether the Matrimonial Causes Rules should be amended to deal with the point (*Hansard*, 1st May, 1950).

Recent Decision

In a case in the High Court, Dublin, on 7th November (*The Times*, 8th November), Gavan Duffy, J., held that, where a person was detained in accordance with s. 29 of the Petty Sessions (Ireland) Act, 1851, which provides for the backing of warrants from Britain to Ireland, that statute not being an agreement needed no reciprocity in the returning of fugitives to another state, and as it had been carried on by the constitution, such a person was not entitled to a writ of *habeas corpus* restraining the Irish police from sending him to Belfast.

LEGAL AID IN OPERATION

The Legal Aid Scheme has now been in operation for nearly two months and already it is possible to obtain some picture of its working. The vast majority of both branches of the profession have joined the panels, and the expected spate of divorce applications has materialised, but the local committees seem to be weathering the storm, partly, perhaps, because the difficulty which applicants find in adequately completing the necessary forms enables the secretariat to gain time by returning them for further and better particulars.

The Law Society have continued with the good work and have produced their most helpful book, "Legal Aid" (H.M.S.O., 6s.), which contains copies of the Act, orders, regulations, scheme and forms, and which has already been distributed to all members of the various committees. In addition, representatives of the Council have addressed meetings of these committees and have answered the many questions which have been raised. For example, an answer has now been given to the problem posed at p. 588, *ante*, on the position of a member of the Certifying Committee who is chosen by the applicant as nominated solicitor. The ruling is that no one who signs a civil aid certificate should accept nomination. Every effort will be made, however, to persuade the applicant to select his solicitor when he first applies and to ensure that the solicitor so selected is not summoned to serve on the committee considering that application. Even if he is summoned he can withdraw from the hearing of that particular application, provided that the prescribed quorum of three still remains. It has also been ruled for the guidance of Certifying Committees that only in exceptional circumstances should they grant a certificate

leading to High Court proceedings if the matter is within the county court's jurisdiction.

Certain anomalies have also come to light. Perhaps the strangest arises from the exclusion of proceedings "wholly *or partly* in respect of defamation, etc." It has been suggested that the result of the words "or partly" is completely to exclude the applicant from any aid not only in cases in which he wishes to add a claim for defamation to a claim on any other grounds within the scheme, but also in cases in which the other party counter-claims on the grounds of defamation!

Another difficulty recently came to light at Chester Assizes. Regulation 17 of the Legal Aid (General) Regulations provides that costs may be awarded against an unsuccessful assisted litigant to "such amount, if any, as the court thinks reasonable having regard to all the circumstances." Normally the court will be in a position to assess what amount is reasonable since it will have before it details of the applicant's means as assessed by the National Assistance Board and of the "maximum contribution." But if the litigant is being assisted under an emergency certificate this information will not be available at the trial. Lord Goddard indicated that he would draw The Law Society's attention to this matter, but in fact it already seems to be covered by proviso (i) to the regulation. This provides that the court may, "if it thinks it expedient for the interests of justice," postpone the determination "for such time and to such place, including chambers, and upon such terms, if any, as the court thinks fit." The solution, therefore, seems to be to postpone the determination until after a full certificate has been granted. This may cause a certain amount of administrative difficulty in assize cases, particularly as the regulation further provides that the determination must be made by the trial judge, but it is difficult to see what better solution can be offered. In the early days of the scheme there are bound to be an exceptionally high proportion of emergency certificates, but it may be assumed that they will shortly become of less frequent occurrence, so that the regulation should not cause undue trouble.

As already mentioned, most applicants seem to have found the expected difficulty in completing the application forms without professional aid and P.M.L. centres find a large part of their time occupied in giving this assistance. They find it slightly irritating that the result of their voluntary labours is that they have to tell their applicants that they should not nominate them as their selected solicitors. Had they been consulted in their own offices, or at any time other than that at which they were sitting as P.M.L.'s, they would, of course, have been able to accept the applicant's invitation to act, and it is for consideration whether The Law Society should not relax the strict rules hitherto imposed on P.M.L.'s, who are playing an essential part in the working of the scheme and who seem to be worthy of encouragement rather than penalisation.

The type of question in the application forms which applicants find particularly baffling is that illustrated by Question 5, Pt. II, of the application for aid in matrimonial causes: "Did you leave your [husband] [wife] or did [he] [she] leave you?" It is said that one applicant, after deep thought, wrote "Yes," but after further consideration scratched this out and wrote "No"! As Question 5 continues: "Give in Part III of this form the circumstances in which you separated," it is for consideration whether the earlier part really fulfils any purpose.

On the whole the scheme seems to be working with less teething troubles than might have been expected. But it does not seem to be entirely popular with insurance companies. One of their assessors has been heard to complain that it is a scandalous instrument of blackmail in running-down cases. There is little reason to doubt that this complaint is partly accounted for by the fact that insurers now find to their sorrow that they have lost the whip-hand in cases where the injured party is without means. The boot is now on the other foot and solicitors cannot be blamed if they indulge in some legitimate kicking in their clients' interests. On the other hand, it is clearly not legitimate to carry this to the lengths of suggesting that, however weak a case may be, it can be got on its feet by obtaining a certificate, and that the insurers would therefore be well advised to settle rather than incur costs which they have no chance of recovering. Generally the insurers' remedy will be to call this bluff, relying on the likelihood that any application for a certificate will be unsuccessful. Often, of course, the application will fail *in limine* because the claim is one proper only for the county court, but in other cases there does seem to be a danger that the Certifying Committee may be led to grant a certificate where this is not really justified simply because they are not seised of all the relevant information.

In one case, where a solicitor, acting for the insurers, felt that the applicant's solicitors were trying to induce a settlement where there was absolutely no case, he spiked their guns by writing a letter setting out all the facts and asking that the letter be brought to the attention of the committee if any application for aid was made. In that case, the applicant's solicitors agreed to do so, but it is difficult to see how such a letter would normally come before the committee. The various application forms seem to be defective in that they impose no obligation on the applicant to reveal vitally relevant correspondence of this nature. It is suggested that they require amendment by the addition of something on the following lines: "Have you consulted any legal adviser in connection with this claim? If so, give his name and address and enclose a letter addressed to him authorising him to answer any questions and produce any documents and correspondence in his possession." If this were done the committee would be in a position to obtain the information needed to assess the merits of the case. At the moment it is doubtful if they always are, and insurers' complaints may not be entirely without justification. If this continues the ultimate loss will fall upon the public and not on the insurance companies, which will cover themselves by an increase in premium rates.

L. C. B. G.

The King has appointed Sir GOODMAN ROBERTS, K.C., to be a Commissioner of Assize on the South-Eastern Circuit.

His Honour HUBERT HULL has been appointed a member and the president of the Transport Tribunal from 1st January, 1951, in succession to Sir William Bruce Thomas, K.C., whose appointment expires at the end of this year.

Mr. A. T. BARRINGER, senior assistant solicitor to Southampton Corporation, has been appointed deputy town clerk of Shrewsbury.

Mr. E. J. O. GARDINER, town clerk and clerk of the peace of Andover, has tendered his resignation to the council in order to become assistant secretary to the Association of Municipal Corporations.

Mr. T. J. OWEN, deputy town clerk of Nottingham, is to succeed Mr. J. E. Richards, who is retiring from the post of town clerk at the end of the year.

Mr. EDWARD VAUGHAN-JONES has been appointed clerk to the Llanidloes bench of magistrates.

BANKRUPTCY LAW AND PRACTICE—IV

The Hearing

The petition is heard before the registrar in chambers. The petitioning creditor should attend unless his personal attendance has been dispensed with by the court. The registrar requires proof of the debt, of service of the petition (if the debtor does not appear), and of the act of bankruptcy. Proof of these requirements is as a rule by affidavit. In this connection, it should be emphasised that the affidavit filed earlier verifying the petition is not sufficient to prove the debt, and the general practice is to call for an affidavit of proof of debt in all cases. If the debtor had given notice of intention to dispute the debt, the debt *must* be proved by affidavit or oral evidence as required by r. 171 of the Bankruptcy Rules. But in the absence of such a notice to dispute, the debtor's admission of the debt at the hearing is proof which complies with the statutory requirements (*Re a Debtor* [1943] Ch. 210), unless the petitioning creditor is a moneylender and the petition is founded on a debt resulting from a moneylending transaction (*Re a Debtor* [1935] Ch. 353). A petitioner who is a moneylender must at the hearing prove his debt by an affidavit which incorporates a statement showing in detail the particulars required by s. 9 (2) of the Moneylenders Act, 1927.

In the case of non-compliance with a bankruptcy notice, proof of the act of bankruptcy will already be on the court file and no further proof is required.

Where the debtor has given notice to dispute and appears at the hearing, the debt and the act of bankruptcy or such of the matters as the debtor has given notice that he intends to dispute must be proved. If new evidence is given on any of these matters or any witness is not present for cross-examination and further time is desired by the debtor to show cause against the petition, any reasonable application for an adjournment should be granted.

Adjournment.—In general, this is a matter entirely within the discretion of the registrar; it is, however, the practice to grant an adjournment at the first return day if desired by both parties. After one month from the first day appointed for the hearing, the mere fact that the parties desire a further adjournment is not a ground for granting it. But this rule does not mean that during the first month an adjournment ought to be granted as a matter of course simply because the petitioning creditor and the debtor both desire it (*Re Heyl; ex parte Morgan* [1918] 1 K.B. 452). On the other hand, even after the first month an adjournment must be granted for the reasons set out in r. 171 (see *supra*); otherwise, some sufficient reason must be shown, and if the registrar accepts it such reason is stated in the order for adjournment. In a case where an adjournment is refused, the registrar will either make a receiving order or dismiss the petition.

Dismissal of petition.—In addition to the precise grounds stated in s. 5 (3) of the Bankruptcy Act, 1914, for dismissing the petition, namely, insufficiency of proof of the debt or of service of the petition or of an act of bankruptcy, or proof by the debtor of his solvency, the court may dismiss it if satisfied that for any other sufficient cause a receiving order ought not to be made. The most important group of cases on what constitutes "other sufficient cause" is that in which the principle was applied that the court will not allow bankruptcy proceedings to be utilised for the purpose of extorting, or attempting to extort, money from the debtor or of putting pressure on the debtor for some collateral purpose (*Re a Debtor* [1928] Ch. 199, where the Court of Appeal reviewed the earlier cases).

In another set of cases, the decision turned on the question of the debtor's assets, as in *Re Betts; ex parte Betts* [1897] 1 Q.B. 50, where the court was satisfied that there were no assets and no probability of any asset arising in the future, or in *Re Otway; ex parte Otway* [1895] 1 Q.B. 812, where the debtor had a single asset out of which he proposed to pay a composition of 10s. in the £, and the effect of a receiving order would be to destroy the asset.

As a concluding instance of what constitutes "other sufficient cause" may be given the rule that if a receiving order has already been made by one court, a second order will not be made by another court unless it is in the interests of the general body of creditors (*Re a Debtor* (1935), 79 Sol. J. 921). A second receiving order should not be made merely to enable a creditor to get the costs of his petition out of the estate.

Finally, it should be noted that a bankruptcy court has power to go behind a judgment debt on which the petition is founded and to inquire into the consideration for the debt. This is an old and settled rule, the object of which is to procure the distribution of a debtor's estate among his just creditors. If a judgment were conclusive, a person might allow judgments to be obtained against him in collusion with friends or relations without any debt being due to them at all (*Re Onslow; ex parte Kibble* (1875), L.R. 10 Ch. 373).

The Receiving Order

After a receiving order has been made, it should be drawn up in triplicate by the petitioner's solicitor for settlement by the registrar. The copy signed by the registrar becomes the original and is filed with the proceedings. The two other copies are delivered to the official receiver, one of which, duly sealed, is served on the debtor. Certain consequences automatically flow from the making of the receiving order. The official receiver becomes receiver of the debtor's property, the remedies of creditors with provable debts are limited and they cannot commence any action or other legal proceedings to enforce their debts except with leave of the court. In effect the creditors can only prove in the bankruptcy, but a secured creditor retains the power to realise or otherwise deal with his security, and a landlord may still distrain prior to the date of the adjudication order. In view of these consequences, the precise date at which the order is "made" within the meaning of the Act is of importance to the debtor and creditors.

When the order is made by the bankruptcy court of first instance, it is effective as from the time and day it is pronounced by the registrar and not from the time the order is drawn up (*Re Manning* (1885), 30 Ch. D. 480). If the court of first instance had dismissed the petition and been reversed on appeal, the practice, followed generally since *Re Raatz; ex parte Carlhian* (1897), 4 Mans. 50, is to date back the receiving order to the day when it ought to have been made in the court below. But this ante-dating is not for all purposes, and in respect of transactions with the bankrupt which are protected by s. 45 of the Bankruptcy Act, 1914, if made "before the date of the receiving order," the date is deemed to be that when the order was made on appeal (*Re Teale; ex parte Blackburn* [1912] 2 K.B. 367).

Rescission of the receiving order.—Where a composition or scheme of arrangement is approved by the court under s. 16 of the Bankruptcy Act, 1914, the receiving order is *discharged*

Proceedings for rescission are based on one of two other sections in the Act. The first (and less important) is s. 12, which provides for rescission in cases where it transpires that the debtor's estate ought to be distributed under the bankruptcy law of Scotland or Ireland. The second is the provision in s. 108 (1) that every court having jurisdiction in bankruptcy may rescind any order made by it. In *Re Wemyss ; ex parte Wemyss* (1884), 13 Q.B.D. 244, decided under the corresponding section in the Bankruptcy Act, 1883, the Divisional Court stated that it was so clear there was jurisdiction under the section to rescind a receiving order that the court need not go through the form of construing it.

The power of rescission is discretionary and two questions of principle which the courts have had to decide are, *first*, the time at which the rescission order can or should be made, and, *secondly*, the grounds for rescission.

As to the first, the problem was whether the court had jurisdiction to rescind the receiving order before the debtor had undergone his public examination. In *Re Izod ; ex parte Official Receiver* [1898] 1 Q.B. 241 the Court of Appeal decided there was jurisdiction, even although the ground for rescission was that the debtor had effected an arrangement with his creditors otherwise than under s. 3 of the Bankruptcy Act, 1890 (now s. 16 of the 1914 Act). But the court should exercise this jurisdiction with great caution and under special circumstances which make it quite clear that the proposed arrangement is for the benefit of the creditors and that the debtor has not been guilty of misconduct in connection with his insolvency. In another Court of Appeal decision, *Re a Debtor* [1920] 1 K.B. 461, it was held that where the official receiver states that in his opinion the rescission should be postponed until after the debtor's public examination, the registrar is not bound by that opinion, though he ought to give it proper weight before making his decision.

With regard to the second point, one of the grounds of appeal in *Re Izod* was that a receiving order should only be rescinded in cases where an adjudication of bankruptcy could be annulled, namely, where the creditors have been paid in full, or where the order ought never to have been made. This was rejected by the majority of the court, who came to the conclusion that observations to that effect by Cave, J., in *Ex parte Leslie* (1887), 18 Q.B.D. 619, were not borne out by the judgment of the Court of Appeal in *Re Hester ; ex parte Hester* (1889), 22 Q.B.D. 632, and the authorities subsequent to that case. The principle decided in *Re Hester* was that the court has jurisdiction to rescind a receiving order even though a scheme or composition has not been proposed by the debtor. Consequently, the court's jurisdiction to rescind is a matter of discretion though it will not rescind as a matter of course merely because all the creditors consent to the rescission. It will consider all the circumstances of the case and the interests of the general body of creditors and of the public, and will be guided by the provisions of s. 29 as to the annulment of an adjudication in bankruptcy.

The rescission under s. 108 (1) of a receiving order rightly made can only be by the court which made it. In *Re Norris* (1890), 7 Morr. 8, a receiving order had been made against the debtor, who at once appealed against it, but when the appeal came on for hearing it was stood over because of negotiations then in progress between the debtor and the petitioning creditor. The negotiations led to an arrangement being made between the two parties and the appeal was restored to the paper. The court said it could only dismiss the appeal, leaving the debtor to apply to the registrar to rescind the receiving order if events subsequent to the making of it justified him in doing so. On the other hand, where the Court of Appeal reversed the registrar's decision to refuse a receiving order and made the order, it granted a subsequent application by the debtor for the rescission of such receiving order (*Re Perkins* (1890), 7 Morr. 78). Every application of this kind, however, is treated on its merits and is only allowed if it appears safe to the court to rescind the receiving order.

Procedure on rescission.—Application is by motion, of which notice and a copy of affidavits in support must be served on the official receiver not less than seven days before the day named in the notice for hearing. Where the ground of the application is payment of debts in full, the official receiver will file four days before the hearing a report on the debtor's conduct and affairs, including a report as to his conduct during the proceedings. This report is *prima facie* evidence of the statements contained in it.

Any creditor whom the court may order to be served with notice of the application or may permit to appear, and the trustee in bankruptcy (if any), have a *locus standi* at the hearing. For this purpose the term " creditor " includes a creditor shown in the debtor's statement of affairs and a creditor who had notified the official receiver or trustee of a claim against the debtor. Such persons may support or raise objections to the debtor's application for rescission.

I. H. C.

Costs

ADMIRALTY—III

We noticed in the last article dealing with this subject that the costs in an Admiralty action follow much on the same lines as those of an action in any other division of the High Court, with certain exceptions which we considered. The principal item in the bill of costs in an Admiralty action, as it is in any bill of costs relating to an action, is that known as " Instructions for Brief." Under R.S.C., Ord. 65, r. 27 (9), it will be recalled, the taxing master is authorised to allow " such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses." In collision damage actions the oral evidence of witnesses is an essential part of each side's case, and often considerable trouble and expense is incurred in obtaining such evidence. Thus, it may be that the casualty occurred in foreign waters and that the client's vessel will not be visiting the United Kingdom, with the result that the witnesses must be seen abroad, necessitating a journey by the solicitor instructed and a stay abroad for some days whilst he goes into the facts of the case with the witnesses who were on board the vessel at the time of the casualty.

Moreover, apart from the evidence of the ship's own crew and officers, it may be that the casualty was seen by the crew of another vessel. This quite often occurs where the casualty happens during the course of docking or undocking, or in moving from one position to another in a harbour. In such cases, the supporting evidence of the independent witnesses, a term used to denote witnesses who are not in the pay of the party to the action, may be very material, and the cost of obtaining such evidence is an element in the fee " Instructions for Brief."

The chief factors which determine the amount of the fee under this heading are (i) the amount of work reasonably and properly done in the way of interviewing the witnesses, both the party's own employees and the independent witnesses,

including the time involved in travelling to interview the witnesses, where it is not reasonable or practicable to bring the witnesses to the solicitor's office, interviewing surveyors who will be able to give evidence as to angle of blow and speed, examining the log books, master's reports, survey reports, and other contemporary documents, obtaining records of the weather prevailing at the time of the casualty, the state of the tide and the prevailing currents, and obtaining charts of the locality and marking thereon the courses taken by the colliding vessels for a period leading up to the casualty in order to test the veracity of the story told by the witnesses and whether that story is supported by the log book entries ; (ii) the nature and importance of the case.

So far as this latter element in assessing an allowance for the item " Instructions for Brief " is concerned, regard must be paid to R.S.C., Ord. 65, r. 27 (38), which provides that the taxing master shall take into account, amongst other things, the nature or importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, and all other circumstances. The provisions of sub-rule (38A) must also not be overlooked, for this sub-rule states that if the costs are excessive, having regard to the nature of the business transacted, the interests involved and the money or value of property to which the costs relate, then the taxing master will only allow such costs as are reasonable and proper. Thus, for example, if the collision which is the subject-matter of the action occurs between two small vessels of little value, unladen with cargo, then the taxing master might regard it as unreasonable to incur the expense of a long and protracted journey in order to interview the witnesses when it might have been possible to obtain statements of their evidence through an agent on the spot.

Emphasis is again laid on the fact that in Admiralty collision damage actions the fee for " Instructions for Brief," or where the action is settled before going to trial the fee in lieu of " Instructions for Brief," will include work done in the very early stages of the action, or even before the action is commenced : see *The Channel Queen* [1928] P. 157, where it was held that the parties in such an action were entitled to obtain such evidence as is necessary to prepare their preliminary acts, which are documents that must be filed in court before the pleadings in Admiralty damage actions are drawn. In that case the action was discontinued within five weeks after the issue of the writ and it was held that the defendants were entitled to the cost of obtaining the evidence of their own witnesses, but not that of the independent witnesses, because the evidence of the latter was not necessary to enable the defendant's solicitors to draw the preliminary act. Reference may also be made to the case of *Société Anonyme Pêcheries Ostendaises* v. *Merchants Marine Insurance Co., Ltd.* [1928] 1 K.B. 750, where it was held that in certain circumstances the costs of obtaining evidence even before the commencement of the action was an allowable item in a party-and-party taxation.

So much then for the item " Instructions for Brief." It will be obvious that it is quite impossible to give even an indication of what fee would be allowed, for every case must be judged on its own facts, and a number of factors must be taken into account in assessing the value of this item in the bill of costs. The case may be a simple one and the documents few. On the other hand it may be a very difficult case : see, for example, *The Roberta* (1939), 63 Ll. L. Rep. 108 (C.A.), where the work involved was difficult and complicated and the trial lasted for fourteen days.

Special consideration must be given to the question of the cost of producing the evidence at the trial in Admiralty cases, and this involves a consideration of the amount allowed for witnesses' expenses. We have already referred above to the fact that a surveyor is usually instructed to attend and inspect the vessels with a view to qualifying himself to give evidence as to the angle of blow and speed, and a reasonable and proper fee will be allowed for this, together with the necessary travelling expenses incurred by the surveyor in getting to the damaged vessels. In addition he will be entitled to his proper and reasonable fee for attending the trial to give evidence, together with the necessary expenses involved.

Again, a survey fee is allowed in a defendant's bill of costs in respect of a survey of the plaintiff's vessel in order that the surveyor may be in a position to check the plaintiff's claim, whilst the plaintiff will be entitled to a similar allowance where the defendant counter-claims in the action, or intimates at the inception of the action that he intends to hold the plaintiff liable for the casualty.

In addition to his fee for the attendance on the vessel for the purpose of surveying her, the surveyor will be entitled to a fee for making the necessary calculations and working out the speed and angle of blow in order to qualify to give evidence on this point.

In addition to the surveyor there are, of course, the ship's witnesses, and the independent witnesses. So far as those witnesses who are in the pay of the successful party are concerned, the employer will be entitled to the loss which he has sustained as a result of the witness's attendance at the trial. This loss will include the wages of the witness, the travelling expenses from the witness's home or the port at which his vessel is lying, his hotel expenses at the place of trial and the costs of his sustenance. The same principles will apply so far as the independent witnesses are concerned. The rate of pay can, of course, be proved, whilst the witnesses will be entitled to travelling and hotel facilities consistent with their social status. In this respect it is customary to allow ship's officers first-class travelling and hotel expenses, whilst the other members of the crew will be entitled to third-class travelling and hotels.

There is one important factor with regard to witnesses in Admiralty cases which does not normally arise in regard to witnesses in other types of action, and that is the question of detention. It will readily be appreciated that seafaring witnesses are not always available when the trial is fixed, and although every endeavour is made to fix the date when all the witnesses of both parties are available, it may be that an important witness has left the party's employ and is serving on a vessel in another line. In these circumstances it may be that his vessel will not be in a port in the United Kingdom at the time of the trial, and there are then two courses available. The witness may either be examined in court before the trial or he may be examined on commission and his evidence read, or, alternatively, if his vessel comes into a United Kingdom port some time before the date fixed for the trial, arrangements may be made to take him off the vessel and detain him here until the trial is concluded.

Several factors must be taken into account in determining which course to adopt. It was decided long ago, in the case of *The Karla* (1864), Br. & Lush. 367, that a litigant is not obliged to examine his witnesses beforehand and is entitled to have them present at the trial. On the other hand, Lord Sterndale, M.R., pointed out in the case of *The Ibis VI* (*No.* 1) [1921] P. 255, that the nature and importance of the case must be taken into account in determining whether or not a witness shall be detained on shore, or whether he shall be examined beforehand. Normally, counsel's opinion will be taken as to which course to adopt. The period during which the witness may be detained will also depend on the

circumstances of the case. Thus, in two cases mentioned in "Roscoe's Admiralty Practice," 5th ed., at p. 403, lengthy periods of detention were allowed: in the one case three officers and two seamen were detained for five weeks, whilst in the other two officers were detained for as long as fifteen weeks.

Normally, one cannot recover from the other side anything in respect of the cost of detaining a witness after the end of the trial, but where a member of the crew has been taken off the boat in order that he may attend the trial then he is entitled to be recompensed for the loss which he will sustain whilst he is waiting for another vessel. Two relevant cases may be noticed here. In *The Lake Farmingdale* (1924), 18 Ll. L. Rep. 374, two witnesses were ashore for two months before they rejoined their boat, but it was held that only one month's pay and allowances were allowable since they had made no effort to obtain other employment. The other case, mentioned on p. 404 of "Roscoe's Admiralty Practice," 5th ed., relates to a ship's master who was detained for four months before he could obtain another boat, and the whole of this expense was allowed on taxation since the master had made every effort to obtain other employment, without avail.

J. L. R. R.

A Conveyancer's Diary

RESALE UNDER A CONDITION

THE difficulty—one may say the impossibility—of framing certain conditions of sale in such a way as to make them fit in with the overriding requirements of the general law is well illustrated by the case of *Smith* v. *Hamilton*, reported in this journal for 11th November, at p. 724. By an agreement in writing which incorporated the National Conditions of Sale (15th ed.) the plaintiff agreed to purchase the defendant's house, and she paid the usual deposit on the purchase price. The date fixed by the agreement as the date for the completion of the sale was the 4th April, 1949. In March the plaintiff informed the defendant that she might not be able to complete on time, and in reply the defendant stated that he could not agree to an extension of time to complete, but without prejudice would delay the exercise of his rights until the 19th April. The plaintiff did not complete by that date, and a few days later the defendant resold the property. On the 4th May the plaintiff was able to complete, and she issued a writ claiming the return of her deposit. The defendant counter-claimed for a declaration that the deposit had been forfeited.

Condition 25 (1) of the National Conditions provides that if a purchaser shall fail to complete his purchase "according to these conditions," his deposit shall thereupon be forfeited (unless the court otherwise directs) to the vendor, and the vendor may with or without notice resell the property at such time and in such manner as he shall think fit. The defendant relied upon this condition, on the effect of which the case turned.

Harman, J., found that (*a*) time had not been made of the essence, so far as the stipulated date for completion was concerned, by the original agreement between the parties, and (*b*) there had been neither an anticipatory breach of the agreement on the part of the plaintiff nor any kind of impropriety of the sort alluded to in *Green* v. *Sevin* (1879), 13 Ch. D. 589. On these facts he gave judgment for the plaintiff, holding that under condition 25 (1) a forfeiture of the deposit did not arise until the purchaser had by his default or delay deprived himself of the equitable remedy of specific performance, and that, in his judgment, had not happened here.

The actual decision was thus a decision on the question (the only one before the court) whether the deposit had or had not become forfeited, but this question is inextricably involved with the further question whether the vendor's right of resale has arisen, since in this and other common-form conditions of sale in extensive use the right to forfeit a deposit and the right to resell are expressed to arise in the same circumstances and under the same conditions.

The fallacy into which the defendant-vendor fell in this case sprang from the literal interpretation which he apparently put upon the words of the condition in question. The purchaser had failed to complete his purchase according to the conditions (one of which was the condition that the day for the completion of the purchase should be the 4th April), and therefore condition 25 (1) came into operation and entitled him to forfeit the deposit and to resell. But between the statement of facts leading up to the conclusion and the conclusion itself there is another matter to consider and interpose, and that is the general rule that in the case of contracts for the sale of land time is never of the essence of the contract unless specifically made so by (*a*) express stipulation incorporated in the contract, or (*b*) necessary inference from the circumstances of the contract, or (*c*) notice duly given by one party to the other. This rule may be examined a little further.

The first exception to the general rule requires no further comment, except that it is very rare in practice to come across an express stipulation of this kind in the ordinary sort of contract for the sale of land. The second exception is also one that rarely comes to notice, but the nature of the premises comprised in the contract will sometimes justify the conclusion that completion was intended to, and therefore must, take place on the date fixed (see, e.g., *Lock* v. *Bell* [1931] 1 Ch. 35, a sale of licensed premises). It is the third exception, whereby parties are allowed in certain circumstances to make time of the essence of the contract although such was not the case under the terms of the contract as originally agreed, which is at once the most important practically and the most difficult to formulate succinctly but accurately.

The circumstances in which this exception can operate as a matter of law are stated in *Green* v. *Sevin*, *supra*, at p. 599, *per* Fry, J.: "It has been argued that there is a right in either party to a contract by notice so to engraft time as to make it of the essence of the contract where it has not originally been of the essence, independently of delay on the part of him to whom notice is given. In my view, there is no such right . . . That which is not of the essence of the original contract is not to be made so by the volition of one of the parties, unless the other has done something which gives a right to the other to make it so. You cannot make a new contract at the will of one of the parties. There must have been such improper conduct on the part of the other as to justify the rescission of the contract *sub modo*, that is, if a reasonable notice be not complied with." What is the precise meaning of the requirement that the party to whom notice is given must have been guilty of improper conduct has never been clarified, and it is doubtful whether a definition of this expression will ever be

attempted, but on the authorities it is clear that the most usual, if not the only, form such conduct takes is unreasonable delay (see, e.g., *Wells* v. *Maxwell* (1863), 33 L.J. Ch. 44).

So it comes to this: *prima facie* a purchaser fails to complete his purchase for the purpose of a condition such as that contained in condition 25 (1) of the National Conditions if he does not complete on the day fixed for completion, and *prima facie* the terms of this condition then allow the vendor to resell the property. But except in the small number of cases where the date for completion is either expressed to be, or is regarded in the circumstances as being, essential, this *prima facie* position is illusory, since before the vendor can take advantage of this condition he must serve a proper notice upon the purchaser, calling upon the purchaser to complete within a reasonable time; and as has been seen, a notice of this kind is effective only if the purchaser, by his improper conduct (i.e., unreasonable delay) has given the vendor the right to serve such a notice. The order of events leading up to a right of resale under a condition of the kind under consideration is not, therefore, simply delay on the part of the purchaser, followed immediately by the assertion of the right of resale; the sequence is rather as follows: unreasonable delay on the part of the purchaser; notice by the vendor to the purchaser to complete within a reasonable time; failure to comply with such notice; resale.

It is quite clear, when the rule is stated in this way, that the assertion of a right of resale under a condition of this kind is justified only by unreasonable delay (or other improper conduct, if that can be alleged) on the part of the purchaser; there is no warrant for the supposition which I have seen put forward in recent years that some extraneous circumstance, such as the imminence of a requisition order, permits a resale under such a condition.

The general conditions in *Smith* v. *Hamilton, supra*, were the National Conditions of Sale, but the remarks above are intended in explanation and not in criticism of the form of the condition in question. There is, in my view, no form of words available which will express the rights of the vendor in the circumstances postulated in a practical manner without the necessity for some mental gloss to be put upon the words actually used. To attempt a completely exhaustive formulation of those rights, having regard to the haze which surrounds the meaning of the expression "improper conduct" as applied to a purchaser, is clearly out of the question, and where partial attempts are made to this end the danger of confusion between the actual and the expressed rights of the vendor are not reduced but enhanced. "A B C"

Landlord and Tenant Notebook

DEREQUISITIONING DEMISED DWELLING-HOUSES

LIKE other emergency legislation, that dealing with requisitioning bears a piecemeal character. When the second world war broke out, and the Emergency Powers (Defence) Act, 1939, and Defence (General) Regulations, 1939, issued thereunder, and the Compensation (Defence) Act, 1949, were speedily enacted, some regard was of course had to the fact that more than one person might possess an interest in property affected. But not all possible consequences were foreseen: the general power to take possession of land in Defence Reg. 51, authorising subsequent use for such purpose and in such manner as the requisitioning authority thought expedient, never concerned itself with the question whether the land was the subject of a tenancy or not. The measure dealing with compensation, however, recognised the possibility. The "compensation rent" is made payable to "the person who for the time being would be entitled to occupy the land but for the fact that possession is retained . . . but this subsection shall not operate so as to require the making of payments at intervals of less than three months"; the compensation for damage payment "shall accrue due at the end of the period for which possession of the land is retained . . . and shall be paid to the person who is then the owner of the land" (Compensation (Defence) Act, 1939, s. 2 (2) and (3)). "Owner" means the person receiving the rack-rent or who would receive it if the land were let at a rack-rent (*ib.*, s. 17 (1)).

A later provision, that of s. 12 (2) of the Compensation (Defence) Act, 1939, may or may not have been passed with conscious regard to the existence of demised property, but was found to require modification later; it provided that no compensation should be paid under the Act to anyone in respect of loss of or damage to property if and so far as the person concerned had become entitled, apart from the Act, to recover damages or indemnity in respect of that loss or damage, or was required to be insured under some contract with the Crown. The first modification was that made by Defence Reg. 68AB, which came into force on 15th January, 1941. By then the requisitioning of empty houses in order to accommodate air-raid victims had become common in areas affected, and many such houses were of the "weekly property" type, the tenants of which had left without giving or receiving notices to quit. The new enactment provided for payment of the compensation rent to the lessor instead of the lessee if such property had not been actually dwelt in for twenty-one days before possession was taken and no rent had been paid; while if the compensation rent should exceed the rent accruing from the lessee, the lessor was to pay over the difference.

Whether there ever has been any such excess I know not; but on 12th December, 1941, a prudent couple, the defendants in *Swift* v. *Macbean and Another* [1942] 1 K.B. 375, who in August, 1939, had negotiated a furnished tenancy of rooms at St. Ives (Cornwall) conditionally on war breaking out, found that as a result of circumstances which they had *not* foreseen they were in a position so deplored by Mr. Micawber: that is to say, they were liable for £163 16s. a year as rent for premises which had been requisitioned, but entitled to not more than £25 a year compensation. (It is right to say that the requisitioning took place while the premises were temporarily vacant: the defendants had found them not suitable and had taken to sub-letting them on weekly tenancies.) Sued for rent, they pleaded frustration, with the usual result; Birkett, J., observed that the alleviation of the hardship was the concern of Parliament, and that he was glad to think that in that matter it was an active concern. Something did, indeed, turn up next Lady Day, when the Landlord and Tenant (Requisitioned Land) Act, 1942, became law and provided for disclaimer of leases having not more than five years to run or determining with or twelve months after the war, if the premises were used by the tenant or a member of his family as a residence (week-end or holiday residence expressly excluded) or for the purposes of his business. Generally speaking, the machinery resembled that relating to disclaimer of war-damaged demised premises, but the class

of property was limited, as mentioned, both by reference to length of term and by reference to user. Consequently a large number of lessees have not been able to avail themselves of the statute.

Some two years later it appears to have occurred to someone that the provision of s. 12 (2) of the Compensation (Defence) Act, 1939, mentioned above, taken in conjunction with the earlier provisions as to destination of payments for damage done, might effect an injustice in this way: the tenant, not being owner, had no claim to such compensation if the house were derequisitioned during the term; the landlord's claim was excluded (it seems to have been thought) by s. 12 (2). Whether it was so excluded may be open to some doubt. The subsection speaks of a person who "has become entitled," and it might well be argued that this would not include someone who had been entitled, under the lease itself, all along. However, a new measure, the Landlord and Tenant (Requisitioned Land) Act, 1944, enacted that *repairing covenants* should not be enforceable *during* any period of requisition, and that a covenantee who received payment on the derequisitioning of the land should lose his remedy against the covenantor. It also entitled a tenant who had made good any damage to recover the cost from anyone else who had received compensation for that damage, up to the amount of such compensation. It said nothing about waste.

Now that derequisitioning of dwelling-houses can be said to have reached the "in contemplation" stage, and has in fact been known to happen, it may be useful to consider the scope of the above enactment. It seems that that of the expression "repairing covenant," despite the fact that it is defined in the interpretation clause, may cause some difficulty, especially in cases in which a competent authority has not only taken possession of, but has altered, the house, e.g., by converting a house into flats. "Repairing covenant," by s. 5, means "a covenant, whether express or implied, and whether general or specific, to keep in repair any premises comprised in a lease, or to leave or put such premises in repair, or to pay a sum of money in lieu of leaving or putting the premises in repair, at the termination of the lease, but does not include a covenant to lay out in the reinstatement of any such premises money received under a policy of insurance." Pretty comprehensive, one might say; obviously the draftsmen have thought of a good many things, including *Moss Empires, Ltd.* v. *Olympia (Liverpool), Ltd.* [1939] A.C. 544, deciding that a covenant obliging a tenant either to pay a named sum on repairs or else to pay the landlord the difference between that sum and what was spent was not a covenant to repair, and was unaffected by the Landlord and Tenant Act, 1927, s. 18 (1). But, as *Eyre* v. *Rea* [1947] K.B. 567 (see 91 SOL. J. 111) showed, covenants not to effect alterations and covenants to use as a private dwelling-house in one occupation only are not "repairing covenants" within the meaning of the Act of 1927. There seems at first sight even less reason why they should be so classified for the purposes of the Landlord and Tenant (Requisitioned Land) Act, 1944. But, if they are not "repairing covenants," it appears that though the measure of damages applied in *Eyre* v. *Rea*—the cost of reinstatement—has been held to be not always applicable, namely in *Westminster (Duke of)* v. *Swinton* [1948] K.B. 524 (see 92 SOL. J. 136, comparing the two authorities), the covenantor tenant will, if he does not suffer forfeiture, certainly be put to the expense of reconverting the house to its former state.

If, then, the statutory definition cited does not cover a case of alterations, a landlord claiming compensation for damage which has occurred to the land under the Compensation (Defence) Act, 1939, s. 2 (1) (*b*), may be referred to s. 12 (2) and the tenant would have no defence to a claim for damages under covenants restricting alterations and user. I submit, however, that the definition of "repairing covenant" may well be urged to be wider in scope than at first appears. There are at least two ways of arguing this: first, the 1944 statute was clearly intended to protect tenants from such claims, and it is headed, "An Act to regulate the rights of the parties to leases of requisitioned land with respect to the making good of *damage occurring* during the requisition . . .": the language italicised is that of the Compensation (Defence) Act, 1939, s. 2 (1) (*b*). And secondly, apart from emergency legislation, there are sundry authorities which tend to support the proposition that alterations are breaches of a repairing covenant, whether they also infringe some other covenant or not. These require careful examination, and will be dealt with in a later article, as will the question of the tenant's possible liability for waste.

R. B.

BOOKS RECEIVED

The Stock Exchange Official Year Book, 1950. Vol. 2. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1950. pp. (Index) cxliv and 2094. London: Thomas Skinner & Co. (Publishers), Ltd. £6 net, two volumes.

Register of Defunct and Other Companies, 1950. Removed from the Stock Exchange Official Year Book. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1950. pp. iv and 494. London: Thomas Skinner & Co. (Publishers), Ltd. 20s. net.

The Law and Custom of the Sea. By H. A. SMITH, D.C.L. (Oxon), Professor Emeritus of International Law in the University of London. Second Edition. 1950. pp. xii and (with Index) 216. London: Stevens & Sons, Ltd. 12s. 6d. net.

The Shops Act, 1950. "Annotated Acts." By G. R. CANNER, Barrister-at-Law. 1950. pp. iv and (with Index) 72. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.; W. Green & Son, Ltd. 6s. net.

The Matrimonial Causes Act, 1950. "Annotated Acts." By JOHN B. GARDNER, Barrister-at-Law. 1950. pp. vi and (with Index) 41. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.; W. Green & Son, Ltd. 6s. net.

Local Rates. "This is the Law" Series. By J. H. BURTON, F.S.A.A. 1950. pp. x and (with Index) 90. London: Stevens & Sons, Ltd. 4s. net.

The Arbitration Act, 1950. "Annotated Acts." By T. A. BLANCO WHITE, Barrister-at-Law. 1950. pp. iv and (with Index) 27. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.; W. Green & Son, Ltd. 6s. net.

The Adoption Act, 1950. "Annotated Acts." By CHARLES WINTER, Barrister-at-Law. 1950. pp. v and (with Index) 46. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.; W. Green & Son, Ltd. 6s. net.

The Group Accounts of Holding Companies. By FRANK H. JONES, F.A.C.C.A., A.C.I.S., Certified Accountant and Chartered Secretary. 1950. pp. (with Index) 38. Barkeley Book Co., Ltd. 3s. net.

Outlines of Central Government, including the Judicial System of England. By JOHN J. CLARKE, M.A., F.S.S., of Gray's Inn and the Northern Circuit, Barrister-at-Law. Eleventh Edition. 1950. pp. xii and (with Index) 359. London: Sir Isaac Pitman & Sons, Ltd. 12s. 6d. net.

"Taxation" Manual; Income Tax and Sur-Tax Law and Practice. Sixth Edition. Compiled by Barristers and Experts under the Direction of RONALD STAPLES. 1950. pp. xx and (with Index) 411. London: Taxation Publishing Co., Ltd. 15s. net.

Cripps' Compulsory Acquisition of Land. Release No. 4, 13th October, 1950. London: Stevens & Sons, Ltd.

HERE AND THERE

PROMISING RECORD

IT seems that, after all, the Guy Fawkes night celebrations at Lewes this year were even closer to pre-war standards than I had imagined. Measuring it by the same standards as one measures a good Boat Race night, it achieved a post-war record with forty-nine people fined for throwing fireworks, double last year's haul, and a total of £27 15s. collected in fines. Almost 700 fireworks confiscated by the police will apparently be sold next year in time for the town's next November rearmament programme, the proceeds to go to the County Rate Fund. If rearmament follows the right lines, and that, of course, means securing the noisiest, most destructive and most terrifying missiles available to the civilised world, we ought soon to be remaking the acquaintance of a fearsome projectile formerly known as the "Lewes rouser," a squib of unparalleled size and weight, "jet propelled" by the force of its exploding sparks and bursting with a nerve-shattering report. The wise and the wary were wont to provide themselves with wire-netting spectacles to guard their eyes, if not their ears, against its horizontal discharge.

LAW AT THE GUILDHALL

I RECALLED the other day that Mr. Denys Lowson, the Lord Mayor, is a barrister of the Inner Temple, but I forgot to add that his was no mere perfunctory call *pro forma* as in the case of civil servants collecting just another qualification for a higher grade, doctors with coronerships on their minds, or soldiers with an eye on court-martial appointments. He actually went into chambers and did his pupilage in due form. For one with City of London interests he made the best possible choice and went in with Mr. William McNair (as he then was) at No. 3 Essex Court, in the Temple, where there was not much they could not tell him about commercial law. Even in Essex Court, however, they say, he could hear the City calling. Indeed, it called him so often on the telephone that for long periods the line that should have been buzzing with pleadings and cause lists was blocked with Stock Exchange conferences. In those days no one could have foreseen the pupil presiding at the Guildhall banquet and the master, one of eight learned judges, not counting the Lord Chancellor, his guest. That, by the way, is, I believe, the sole remaining occasion when a judge is expected to do an hour and a half's hard eating and then listen to speeches for another hour and a half in scarlet, ermine and full-bottomed wig—unless one of the more traditionalist circuit towns expects it of the Assize judge. Those who have been through it say that the worst is with the soup. Spaniels, you will have noticed, suffer from much the same difficulty with their ears; they can't keep them out of the plate. Nor can the dangling ends of the full-bottomed wig be thrown back over the shoulders as little girls throw back their pigtails. At table, no doubt, they have the effect of concentrating the mind on the main business in hand, for they are a powerful deterrent to conversation, muffling the sense of hearing, as many a leader has found when arguing an appeal in the House of Lords. They are also a curse to the man who has a habit of putting his glasses on and off; he has to grope blindly for his supporting ears. Long after wigs had ceased to be worn ordinarily in society the judges were expected to cling to theirs (the small variety) and Lord Eldon vainly sought royal permission to discard his. The bishops, I believe, had to go on wearing theirs far into the nineteenth century.

TWO POINTS ON FUSION

EVERY so often the question of the fusion of the two branches of the legal profession turns up as a topic of discussion. So it is well to note as one hears it any scrap of evidence that bears on the matter. In Canada, of course, there is no division, and the lawyers are grouped in large firms. Someone well acquainted with the Dominion was telling me that this has two effects not generally realised over here. On the one hand, it tends to reduce the status of the young men who over here would be practising independently at the Bar. For years they may find themselves bogged down in the position of subordinate clerks with no chance of finding their own feet as advocates. On the other hand, it makes recruitment for the Bench more difficult. The leaders of the Bar, the heads of the successful firms, have every financial inducement to stay where they are, well provided for even in the decline of their powers. Accepting a judgeship means cutting so profitable a connection that only a very high sense of public duty or a very high appreciation of the higher social status of a member of the judiciary—it still is high—can induce the best men to take the step.

RICHARD ROE.

REVIEWS

A Guide to Juvenile Court Law. By GILBERT H. F. MUMFORD, Solicitor, Clerk to the Justices, Luton. Third Edition. 1950. London: Jordan & Sons, Ltd. 10s. 6d. net.

A third edition of this book has been produced to take account of the changes in the law made since the second edition in 1947. The relevant provisions of the Criminal Justice Act, 1948, the Children Act, 1948, the Adoption Act, 1949, and other statutes are all duly noted, and there is a table to show which sections of the Adoption Act, 1950, replace those in the earlier Adoption Acts. A table of statutes (placed, for some reason, in an appendix) has also been added, but the book does not refer to the changes in the law made by the Criminal Justice (Scotland) Act, 1949, in regard to probationers in and from Scotland.

The chapter on Hostels, Homes and Lodgings will be found especially useful, and the book also contains a valuable scale of interpretations of intelligence quotients. The chapter on Mental Deficiency is concise and accurate, but, in view of the large number of juvenile offenders who are of low intelligence, we would prefer to have seen the author expand this chapter and give to his readers the benefit of his wide knowledge of the social side of juvenile delinquency. On the other hand, the greater part of the chapter on the Education Acts seems to have little to do with juvenile court procedure as such.

The book can be recommended with confidence to all magistrates' clerks, prosecuting solicitors, juvenile court magistrates, probation officers and children's officers. It is of a handy size and well indexed. There seem to be only two points of importance omitted. Firstly, the reader might have been warned against the use of the power to remand in custody as a punishment (see *R.* v. *Toynbee Hall Juvenile Court Justices; ex parte Joseph* (1939), 83 SOL. J. 607). And, as boys and girls who are sixteen when they offend often become seventeen before they appear at court or while they are on remand, s. 48 (1) of the Children and Young Persons Act, 1933 (which enables a juvenile court to deal with them notwithstanding that they are no longer juveniles), should surely have been noted in the book.

Employer's Liability at Common Law. By JOHN H. MUNKMAN, LL.B., of the Middle Temple and North-Eastern Circuit, Barrister-at-Law. 1949. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

This is a valuable treatise on a subject of great practical importance—a special application, as the author observes, of the law of tort. It aims to be exhaustive of the English case law and to include, besides, most of the leading Scottish decisions, for on this topic the law of both countries is of a

piece. The English code comprehends many matters which were first decided in Scotland.

The subject has been transformed in recent years substantially in the workman's favour, first by a new trend in case law, and secondly by legislation of particularly sweeping reformative character. Mr. Munkman does not neglect the purely common-law aspect of his theme, and ranges in lucid style and helpful detail over the authorities and the possibilities. The abolition of common employment as a defence has led him to re-examine the facts of decided cases which were defeated only by that defence and to surmise what the result might now be. Similarly, the changes both in law and in the outlook of the courts on the question of contributory negligence are noted.

But the practitioner, and indeed industrialists on both sides, will find the chapters on statutory duty of especial value. Particularly handy is the comprehensive survey of the various statutes and regulations under which actions for breach of statutory duty are likely to be raised, with full quotations from Pt. II of the Factories Act, 1937, and summaries of the regulations affecting particular industries. Short chapters on Crown liability, damages, and pleading and practice complete a well-wrought design.

A Handbook on Bankruptcy Law and Practice. By IVAN CRUCHLEY, LL.B., of Gray's Inn, and the Midland Circuit, Barrister-at-Law. 1950. London: The Solicitors' Law Stationery Society, Ltd. 18s. net.

It is a bold venture to write, and as bold to publish, a concise statement of a branch of the law contained in a statute of 169 sections and six Schedules, 388 rules, 202 statutory forms, pages of scales of costs, fees and percentages and unnumbered legions of decided cases. In this case the venture has been attended by a considerable measure of success. The result is clear, eminently readable and answers the tests of quick reference on the points arising in daily practice. The reviewer would like to see in future editions references to *Re Simonson* [1894] 1 Q.B. 433, and *Re British Folding Bed Co.* [1948] 1 Ch. 635 (on costs allowable to a solicitor for work benefiting the bankrupt's estate). The statement at p. 118 is incorrect in so far as it means, as it seems to mean, that costs allowable for work benefiting the estate are confined to bankruptcies commenced on the debtor's own petition. Other cases which in the reviewer's opinion are important enough for inclusion in such a work are *Ex parte Helder* (1883), 24 Ch. D. 339 (an agent is not liable for money paid away on a bankrupt principal's instructions even though such payment is an act of bankruptcy), *Times Furnishing Co.* v. *Hutchings* [1938] 1 K.B. 775 (on the termination of reputed ownership on the automatic termination of a hire-purchase agreement), and *Ex parte M'Gowan* (1891), 8 Morr. 72 (notice to a solicitor's managing clerk may in some cases not amount to notice to the solicitor). This criticism must of course be read subject to the qualification that everyone must differ in his ideas as to what should be included in, and what should be omitted from, a concise work. The survey expressly excludes the rights and duties of the trustee and the law as to deeds of arrangement. Author and publisher alike deserve congratulation on the measure of success which they have achieved.

Insolvency Practice. By J. SNAITH, A.S.A.A. 1950. London: Gee & Co. (Publishers), Ltd. 10s. 6d. net.

This book will be useful as a practice work for trustees in bankruptcy and liquidations and receivers of various kinds. It will be particularly useful to those who are entering accountancy offices where insolvency forms a large part of the work. To the lawyer the introduction can only result in mystification and discouragement, because although Mr. Snaith writes that his explanations of law are a layman's and "may at times appear unconventional," there is much unnecessary confusion and inaccuracy as well as unconventionality in his explanations, for example, of redress by legal process, which confuses contracts with civil wrongs and specially endorsed writs with county court default summonses. It is also not quite correct to suggest (at p. 44) that the adjudication order is made "at or about the same time" as the receiving order. Notwithstanding these matters the book is packed with sound advice of a practical nature of the greatest value to bankruptcy and liquidation trustees and receivers. Lawyers who can recognise technical errors will be the first also to acknowledge the fact that this work is a clearly written account of what is obviously the fruit of great experience.

NOTES OF CASES

HOUSE OF LORDS

SURGEON'S WRONG DIAGNOSIS: PATIENT'S CLAIM

Whiteford *v.* Hunter

Lord Porter, Lord Normand, Lord Oaksey, Lord MacDermott and Lord Reid
16th November, 1950

Appeal from the Court of Appeal (*The Times*, 22nd March, 1949).

The defendant, a surgeon, wrongly diagnosed a cancerous growth in the bladder of the plaintiff, an American consulting engineer, in 1942, and told him that he had only a short time to live. The plaintiff consequently closed down his practice here and returned to America. He was there found to be suffering not from cancer but from chronic cystitis and a considerable diverticulum in the bladder. He sued the defendant, alleging negligence as the cause of the faulty diagnosis. Birkett, J., awarded the plaintiff £6,300 damages. The Court of Appeal reversed that decision, and the plaintiff appealed. The House took time for consideration.

LORD PORTER said that the main criticisms of the defendant's treatment, and those relied on by Birkett, J., were (1) that no cystoscope was used before the opening of the bladder, and (2) that no specimen of the growth was taken in order to test microscopically whether or not it was cancerous. The plaintiff's argument was, not that the diagnosis was negligent, but that the resemblance between real and simulated cancer was so close that in no case should a diagnosis of cancer be accepted without a pathological examination. A surgeon must exercise the reasonable degree of skill and care which a surgeon in his position ought to exercise. Further, a defendant charged with negligence could clear himself if he showed that he had acted in accord with general and approved practice: see *per* Maugham, L.J., in *Marshall* v. *Lindsey C.C.* [1935] 1 K.B. 516, at p. 540. The defendant here gave evidence that his action did conform to the skilled practice of the profession, and two eminent surgeons gave evidence in support of that assertion. The emeritus attending urologist at the Memorial Hospital, New York, who treated the plaintiff in America, gave evidence for him on commission. He had established the absence of cancer and cured the plaintiff. He said that to verify a diagnosis of a cancerous growth "a complete examination by means of a cystoscope and through the open bladder and a pathological examination of any questionable area" should have been made, and those were the steps which he took himself. He said that they were the usual and ordinary steps in a matter of that kind and that there was no difficulty or danger in either operation. If that meant that in the conditions with which the defendant was faced in March and April, 1942, those steps should have been taken, it would have had a very important bearing on the question in issue; but he (his lordship) did not take

that view: the appearance and state of the bladder found when it was opened in April, 1942, did not seem to have been disclosed to the witness. His answers did not suggest that he had in mind "an indurated mass covered with thickened mucous membrane abnormal in colour" as described by the defendant. They suggested that he envisaged a condition similar to that found in New York. Even if his testimony were accepted in full, no specimen could have been taken by means of a cystoscope unless it were fitted with a rongeur attachment, and the evidence established that such an instrument was in 1942 very rarely to be obtained in England, and was not possessed by the defendant. Nothing in the evidence showed that the defendant was negligent not to use a cystoscope. All the medical witnesses in this country asserted that it was against approved practice in England to use a cystoscope where there was acute urinary retention; and that, when the bladder was drained and collapsed, it was difficult, if not impossible, to use one effectively unless it were of the flushing type, an instrument which the defendant did not possess and which was rare in this country at the relevant date. The circumstances when the American doctor opened the bladder were very different from those subsisting when the defendant made his diagnosis. No negligence had been established.

The other noble lords also delivered opinions dismissing the appeal. Appeal dismissed.

APPEARANCES: *Richard O'Sullivan*, K.C., and *Robert Fortune* (*Billinghurst, Wood & Pope*); *C. R. Havers*, K.C., and *H. C. Dickens* (*Hempsons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.

COURT OF APPEAL

LANDLORD AND TENANT: DILAPIDATIONS: TENANT'S USE OF ADJOINING PROPERTY

Perrott (J. P.) & Co., Ltd. *v.* Cohen

Somervell, Cohen and Denning, L.JJ.
12th October, 1950.

Appeal from Birkett, J.

During the defendant's tenancy in 1943, the plaintiffs, his landlords, discovered that he was claiming that certain lavatories on the landlords' premises adjoining the demised premises were included in the lease. The lavatories were not included in the lease, and the landlords asked the tenant to withdraw the claim; but he refused, saying that he had the keys and had whitewashed the lavatories. The position remained unresolved when the lease expired. The landlords' claim for dilapidations included items of repair to the lavatories. Birkett, J., decided in favour of the landlords on that basis, holding that the lavatories should be deemed to have been included in the lease on the equitable principle laid down by Scrutton, L.J., in *Berry* v. *Berry* [1929] 2 K.B. 316. The tenant appealed.

SOMERVELL, L.J., said that *Tabor* v. *Godfrey* (1895), 64 L.J.Q.B. 245, had been cited for the landlords as more relevant to their submission than *Berry* v. *Berry*, *supra*. On the evidence, Birkett, J., would have been justified in concluding that from the beginning the landlords and the tenant treated these lavatories as part of the land demised. There was nothing in *Tabor* v. *Godfrey*, *supra*, which corresponded to the letter of protest written by these landlords in 1943, and that made the present problem one of difficulty. But, having regard to the complete acquiescence of the landlords after that date in the *de facto* position, the only conclusion to which he (the lord justice) could come was that the lavatories had been occupied throughout by the tenant as if they were part of the property demised. That being so, it was right to treat them as part of the demised premises, and the tenant could not now shift his position and disclaim liability for dilapidations in respect of them.

COHEN, L.J., agreed.

DENNING, L.J., said that the representation made by the encroaching tenant was, in effect, a promise that the term of the lease should apply to the adjoining piece of land of which he was in possession, and was binding on the principle which he (the lord justice) had stated in *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] K.B. 130. Conversely, if a landlord should allow a tenant to occupy adjoining property and by his conduct represented to the tenant that it was included in the demise, and the tenant acted on it by using it as such, the landlord could not afterwards turn round and eject the tenant from it during the term of the lease. That was decided in *Tabor* v. *Godfrey*, *supra*. Applying those principles, the lavatories here should be treated as part of the demised premises, and the tenant was liable in damages for not repairing them. Appeal dismissed.

APPEARANCES: *E. Wooll*, K.C., and *H. Lester* (*Alfred Bieber and Bieber*); *Elwes*, K.C., and *Dennis Thompson* (*Waterhouse and Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RATING: ROTARY KILNS AT CEMENT WORKS

British Portland Cement Manufacturers, Ltd. *v.* Thurrock Urban District Council and Others

Somervell and Denning, L.JJ., and Vaisey, J.
20th October, 1950.

Appeal from the Divisional Court.

The respondent rating authority proposed to include in their valuation list rotary kilns used by the appellant company in the manufacture of cement. The kilns were used in that manufacture for firing a slurry mixture of chalk and clay. They consisted of long inclined cylinders up to 800 tons or more in weight. The kilns rotated on bearings, being driven by electric motors, and they rotated day and night for 90 per cent. of the year. The roller bed-plates of the kilns were mounted on brick or concrete piers which were already assessed for rating purposes. The slurry mixture passed downwards through the kilns, and before reaching the lower end formed into a cement clinker. Inside a kiln three manufacturing processes were carried out: in the first, the slurry mixture was dried; in the second, with increasing heat, it was mixed with finely-powdered coal and was turned into caustic lime; in the third, it passed through the "burning zone," and a chemical combination took place resulting in cement. The necessary control of rate of feed of raw material and fuel and of speed of rotation was effected by an operator at a switchboard. A kiln would have to be dismantled if it had to be moved. It would normally remain permanently where it was erected. By s. 24 (1) of the Rating and Valuation Act, 1925, " . . . (*a*) all such plant or machinery in or on the hereditament as belongs to any of the classes specified in Sched. III to this Act shall be deemed to be a part of the hereditament" for rating purposes. Under s. 24 (3) "for the purpose of enabling all persons concerned to have precise information as to what machinery and plant falls within the classes specified in the said Sched. III" the Plant and Machinery (Valuation for Rating) Order, 1927, was made, class 4 of which includes "The following parts of a plant or a combination of plant and machinery . . . to such extent as any such part is, or is in the nature of, a building or structure . . . kilns." Quarter sessions held, on appeal from the respondent assessment committee's determination, that the company's rotary kilns formed part of a plant or a combination of plant and machinery, were kilns, and were in the nature of a structure, so that they fell within class 4 and were rateable. On appeal by the company, the Divisional Court (Lord Goddard, C.J., and Humphreys, J., Morris, J., dissenting) held that there was evidence on which quarter sessions could hold that the kilns formed part of a plant or a combination of plant within class 4 notwithstanding that they rotated by virtue of machinery attached to them; that they were properly described as "kilns," as being receptacles into which material was placed for

treatment by heat, and were not machines, but things driven by machines; that the fact that the kilns rotated always in the same place and in the same plane was not enough to prevent their being in the nature of a structure, of which there was ample evidence; and that they were accordingly rateable. The company now appealed to the Court of Appeal.

SOMERVELL, L.J., said that what was *prima facie* a kiln did not cease to be a kiln because it rotated. All three judges in the Divisional Court had agreed that these rotary kilns were "kilns" within the meaning of class 4 of the order of 1927 and he agreed with them. On the question whether the issue involved was one of law or of fact (Humphreys, J., had thought it one of law), he would refer to the judgment of Denning, L.J., in *Cardiff Rating Authority* v. *Guest, Keen, etc., Ltd.* [1949] 1 K.B. 385, at p. 396; 93 SOL. J. 117. There was not here any suggestion of misdirection or wrong application. He (Somervell, L.J.) thought that the question whether something was in the nature of a structure or plant and machinery or machinery simply was essentially one of fact for quarter sessions unless they had put a wrong construction on the words to be applied or it could be shown that there was no evidence on which they could come to their conclusion. On this point he agreed with Lord Goddard, C.J. Rotary kilns could not be said to be machinery simply and not within the words "plant and machinery." Further, there was evidence on which the kilns could be said to be in the nature of structures. It was impossible to say that there was no evidence on which quarter sessions could come to their conclusion.

DENNING, L.J., and VAISEY, J., agreed. Appeal dismissed.

APPEARANCES: *Michael Rowe*, K.C., and *G. D. Squibb* (*J. F. W. Unsworth*); *Erskine Simes*, K.C., and *C. E. Scholefield* (*Bull & Bull*, for *Hatten, Asplin, Jewers & Glenny*, Grays Thurrock).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SOLICITOR: ACTING FOR MORTGAGOR AND MORTGAGEE: GENERAL LIEN ON TITLE DEEDS

Barratt *v.* Gough Thomas

Evershed, M.R., Asquith and Jenkins, L.JJ.

24th October, 1950

Appeal from Romer, J.

The plaintiff was the owner of certain freehold property the title deeds to which were left with the defendant, the plaintiff's solicitor. In December, 1919, the plaintiff mortgaged the property and the title deeds remained in the custody of the defendant, who likewise acted for the mortgagee and held the documents for him as the person entitled to their possession during the existence of the mortgage. The mortgagee died in February, 1941, and the mortgage vested in his four executors of whom the defendant was one. In 1943 the plaintiff gave six months' notice to pay back the mortgage, and the defendant claimed to be entitled to a general lien on the title deeds with respect to costs owing to him by the plaintiff. In March, 1944, the plaintiff began proceedings for the redemption of his land, and in July, 1945, Vaisey, J., held that the defendant was not entitled to his lien. In January, 1946, the defendant arranged for a transfer of the mortgage from the mortgagee's executors to himself alone, and held the documents of title as sole mortgagee. Romer, J., held that the defendant was not entitled to the lien; the learned judge stated that it was his duty to follow the judgment of Vaisey, J. The defendant appealed.

EVERSHED, M.R., said that a solicitor's general lien was a right at common law depending upon implied agreement. It had not the character of an incumbrance or equitable charge; it was merely passive and possessory; the solicitor had no right of actively enforcing his demand. The lien was derived from, and therefore co-extensive with, the right of the client to the documents or other property. The absence of any right to or property in the documents on the part of the client seemed, as a matter of principle, fatal to the continued existence of the lien. From the moment of the execution of the mortgage, the defendant's retention of the documents of title was exclusively referable to his agency for the mortgagee, and the mortgagor had ceased to have any right to the document from which any lien could be derived. On redemption it was the mortgagee's duty to hand back the deeds to the mortgagor. The defendant had not strengthened his position by his interest as mortgagee. As solicitor to the mortgagee he could not retain the deeds because he would involve his client in a breach of the latter's legal obligations, and as mortgagee he could not claim the lien because that would be inconsistent with his own legal obligations.

ASQUITH and JENKINS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Geoffrey Cross*, K.C., and *D. H. Cohen* (*Rooke & Sons*, for *William Gough Thomas*, Ellesmere, Salop); *Neville Gray*, K.C., and *J. A. Brightman* (*Field, Roscoe & Co.*, for *Batten & Whitsed*, Peterborough).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

JURISDICTION: SUBMISSION BY PERSON RESIDING ABROAD: GUARDIANSHIP OF INFANTS ACT, 1925

In re Dulles' Settlement; Dulles *v.* Vidler

Evershed, M.R., Asquith and Jenkins, L.JJ.

25th October, 1950

Appeal from Romer, J.

An application under the Guardianship of Infants Act, 1925, s. 3 (2), by an infant, represented by his mother, as his next friend, for maintenance against his father, an American citizen resident abroad, was refused by Romer, J., on the ground that he had no jurisdiction to make such order against a person out of the jurisdiction although the father had appeared by counsel to oppose the application.

EVERSHED, M.R., said that it was beyond doubt in principle that English statutes would not be regarded, in the absence of express language, as conferring any jurisdiction beyond England. But there was another principle that, generally speaking, an individual beyond the English jurisdiction might voluntarily submit himself to that jurisdiction or make himself amenable to the particular law without being personally in England. He (the learned judge) had come to the conclusion that Romer, J., had the jurisdiction which he regretted not having. The two Guardianship of Infants Acts of 1886 and 1925 were intended to have no less operation than any other Act available against a person in the High Court, who by submission to the jurisdiction became amenable to it otherwise than by actual physical presence here. The question whether the father had here submitted to the jurisdiction was made a difficult one by the special facts of the case and he (the learned judge) thought that the best course was to remit the case to Romer, J., who had all the materials available to him and who heard argument on the point.

ASQUITH and JENKINS, L.JJ., agreed.

APPEARANCES: *Michael Albery* (*Herbert Oppenheimer, Nathan & Vandyk*); *Bonner* and *C. P. Hutchinson* (*Landons*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

ROAD TRAFFIC: UNLIGHTED VEHICLE

Hill-Venning *v.* Beszant

Somervell, Cohen and Denning, L.JJ. 27th October, 1950

Appeal from Parker, J.

While the defendant was driving his motor-cycle along the Hog's Back, a straight and open road between Guildford

and Farnham, in darkness, the lighting on the machine failed. Although there would have been no difficulty in wheeling it on to the grass verge which was on a level with the road, he left it in the road, some two feet from the edge, while he sought to locate the fault notwithstanding that it was not, as he had at first believed, merely a bulb which had failed. He did, however, think, reasonably the trial judge found, that it would only take a few minutes to rectify the fault. He saw the light of a vehicle approaching from behind, but continued working at his machine in the road. The light was that of the plaintiff's motor-cycle, which he was driving with the headlight dipped although there was no other traffic on the road. His machine ran straight into the stationary motor-cycle, and he received injuries for which he sued the defendant. The defendant's machine had been at rest from three to five minutes when the accident happened. Parker, J., dismissed the action, holding the plaintiff entirely to blame for the accident. The plaintiff appealed.

COHEN, L.J., delivering the first judgment, said that it might, though it was a matter of doubt, not have been unreasonable for the defendant to leave his machine standing in the road while he fitted a new bulb to his headlight. But the position became entirely different as soon as he discovered that a defect had developed in the electrical system. He should then have moved the machine on to the verge even if he had not seen the plaintiff's light approaching in the distance; for anyone who found himself after lighting-up time with an unlighted vehicle on the road was negligent if he did not take any reasonable precaution to avoid an accident; and what it was reasonable to do must depend on the circumstances of each case The defendant might well not have been negligent had the defect occurred in a road bounded by walls or ditches. As things were, it was his duty to move the machine off the road on to the verge as there was no difficulty in doing so. The plaintiff was also to blame for driving too fast, with his headlight unnecessarily dipped and without keeping a proper look-out. The blame must be attributed as to two-thirds to the plaintiff and as to one-third to the defendant. The defendant had relied also on s. 5 (1) (*c*) of the Road Transport Lighting Act, 1927, the effect of which was that a motor-cycle without a side-car need not carry a light if it were being pushed along the road as near as possible to the left hand side. But the fact that when a person was so pushing an unlighted motor-cycle he could not be made liable civilly or criminally for breach of any statutory duty did not mean that an action of negligence arising out of an accident occurring while he was doing so must necessarily fail.

SOMERVELL, L.J., dissenting, thought, that the defendant was entitled to be acquitted of blame on the basis that he was plainly visible for a considerable distance to any approaching motor vehicle with ordinary headlights. He was not to blame for remaining where he was even though he saw the plaintiff's headlight in the distance, for there was nothing to indicate to him that it was not a normally functioning light, and he was entitled to assume that he would be visible at a distance sufficient to enable the plaintiff to steer past him. As it was not unreasonable for the defendant to suppose that he could rectify the fault within a matter of minutes, he was not guilty of negligence because in the first few minutes after the lighting failure he did not think of wheeling the machine off the road on to the verge. He (the lord justice) would have dismissed the appeal.

DENNING, L.J., said that any unlighted obstacle on a fast motor road was a danger to traffic (see *per* Singleton, L.J., in *Henley* v. *Cameron* (1948), 92 SOL. J. 719; 65 T.L.R. 17, at p. 21). It was therefore for the defendant to explain how his machine came to be in the road, for the presence of an unlighted vehicle in a road was *prima facie* evidence of negligence on the part of the driver, and it was for him to explain why, if it was unlighted, he did not move it off the road or give warning to oncoming traffic. The defendant, having failed to wheel the machine on to the grass verge because he had failed to appreciate that it was a danger in the roadway, had failed to displace the *prima facie* case of negligence against him. Appeal allowed.

APPEARANCES: *H. Glyn-Jones*, K.C., and *G. G. Baker* (*Lowe & Co.*); *Ryder Richardson* (*White & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DETINUE: SALE OF GOODS IN JUDGMENT DEBTOR'S POSSESSION

Curtis *v.* Maloney

Somervell, Cohen and Denning, L.JJ. 27th October, 1950

Appeal from Finnemore, J. (*ante*, p. 437; 66 T.L.R. (Pt. 2) 147).

The plaintiff entrusted his ship to a firm to sell. The sheriff of the county seized the vessel in execution of a writ of *fi. fa.* which had been issued against the firm. No claim to the ship was made by her owner, and she was sold to the defendant at a public auction sale. The plaintiff claimed the return of the vessel, or her value, and damages for detention. By s. 15 of the Bankruptcy and Deeds of Arrangement Act, 1913: "Where any goods in the possession of an execution debtor at the time of seizure by a sheriff . . . are sold by such sheriff . . . without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to the goods so sold . . . Provided that nothing in this section contained shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such sheriff . . ." Finnemore, J., held the defendant protected by that section notwithstanding the proviso, and the plaintiff now appealed. (*Cur. adv. vult.*)

SOMERVELL, L.J., reading his judgment, said that there was force in the plaintiff's argument that, if it had been intended to take away the owner's rights against the purchaser, the word "purchaser" would have appeared after "such" in the proviso. The question was whether any meaning attached to the words "shall acquire a good title" if the purchaser were liable to surrender the goods or their value to the person who was the owner at the time of the sale. It was impossible to reconcile the plaintiff's construction of the proviso with the preceding part of the section. Protection of purchasers for value without notice as against the legal owner was a principle well known in law and in equity. There was no presumption for or against its extension. He agreed with Finnemore, J., that "a good title" meant a good title against everyone. The proviso could not be so read as to contradict and make those express words meaningless by excluding from them the person who was the true owner at the time of the sale. If it were necessary he would hold that the word "purchaser" must have been omitted by inadvertence after "such" in the proviso. The appeal failed.

COHEN, L.J., read a judgment agreeing that the appeal failed.

DENNING, L.J., reading his judgment, said that the object of the proviso was to ensure preservation of the owner's remedy by way of action against the execution creditor for money had and received, or against any wrongdoer who had converted the goods before the sale. But for the proviso, the execution creditor might have argued that the original owner's claim for money had and received was not preserved, for that was an action in which the proceeds of sale were claimed in place of the goods themselves, and it might have been contended that it failed when the plaintiff ceased to be the owner of the goods. Appeal dismissed.

APPEARANCES: *H. Glyn-Jones*, K.C., and *B. Chedlow* (*R. I. Lewis & Co.*); *Peter Bristow* (*White & Leonard*, for *H. M. Pinney*, Hornchurch).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT ACT: MEANING OF "NOTICE"

Kerridge *v.* Lamdin

Evershed, M.R., Asquith and Jenkins, L.JJ.
14th November, 1950

Appeal from Deputy Judge Clarke, K.C.

On 23rd March, 1950, the plaintiff landlord served on the defendant tenant a notice to quit. On 6th April, 1950, the tenant served on the landlord a notice under s. 5 (1) of the Landlord and Tenant Act, 1927, claiming a new lease in lieu of compensation. On 3rd June, 1950, the tenant applied to the county court for a new lease. The landlord objected that the claim could not be heard because it had not been brought within two months after the notice to quit. By s. 5 (2) of the Act of 1927: "Where . . . a notice [by the tenant to the landlord requiring a new lease] is so served, the tribunal on application being made . . . by the tenant . . . where the tenancy is terminated by notice, within two months after the service of the notice, may, if it considers that the grant of a new tenancy is in all the circumstances reasonable, order the grant of a new tenancy . . ." The question was whether "within two months after the service of the notice" there referred to the notice to quit or to the tenant's notice of claim to a new lease. The deputy county court judge decided in favour of the latter alternative, and the landlord appealed.

JENKINS, L.J., said that the primary task was to construe the words as they stood. If there were any ambiguity they should be so construed as to fit in with the general scheme of the Act. Section 4 of the Landlord and Tenant Act, 1927, which gave a tenant a right to compensation for loss of goodwill at the termination of a tenancy by notice to quit, required the tenant to make his claim within one month after the service on him of the notice to quit. Similarly s. 1 (1) (*a*) gave the tenant a right to compensation for improvements provided that the tenant made his claim within one month after the notice to quit had been served on him. He found it impossible to read "within two months after the service of the notice" in s. 5 (2) as meaning anything but after the service of the last-mentioned notice, that was, the notice to quit terminating the tenancy. But for the contrary view held in the court below, and the difference of opinion expressed in the text books, he should have thought the matter clear beyond argument. The appeal should be allowed.

EVERSHED, M.R., and ASQUITH, L.J., agreed. Appeal allowed.

APPEARANCES: *L. A. Blundell* (*Joynson-Hicks & Co.*, for *W. Davies & Son*, Woking); *Cecil Binney* (*Hancock & Scott*, for *Higgs, Thompson & Samwell*, Epsom).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MAINTENANCE: WIFE'S APPLICATION FOR INJUNCTION

Scott *v.* Scott

Somervell and Birkett, L.JJ.
17th November, 1950

Appeal from Wallington, J. (*ante*, p. 707).

An application by the appellant wife was pending for periodical payments for herself and the children of the marriage, and for a secured provision, under s. 5 of the Law Reform (Miscellaneous Provisions) Act, 1949, on the ground of the husband's, the respondent's, alleged wilful neglect to maintain. Her present application was for an injunction to restrain her husband from removing any of his assets outside the jurisdiction of the court pending the hearing and final determination of that application under s. 5. It was stated for the wife that there was evidence that the husband definitely intended to transfer abroad all his assets with the object of depriving the wife of her statutory remedy, and it was contended that the court had jurisdiction in its discretion under s. 45 of the Supreme Court of Judicature (Consolidation) Act, 1925, to issue the injunction. Wallington, J., held that he had no power to grant the application. The wife appealed.

SOMERVELL, L.J., discussed *Newton* v. *Newton* (1885), 11 P.D. 11, *Burmester* v. *Burmester* [1913] P. 76 and *Jagger* v. *Jagger* [1926] P. 93, and said that the principle emerged clearly from those cases that there was no statutory or other power in the court to restrain a husband from removing his assets beyond the jurisdiction where no maintenance order against him had been made. The wife was clearly in a difficulty in asking the court to disregard what had thus been plainly laid down, and affirmed in the Court of Appeal. It was contended that the position was now different because of s. 5 of the Law Reform (Miscellaneous Provisions) Act, 1949, which provided a new remedy as between husband and wife by granting the wife the right to apply directly to the High Court for a maintenance order. That section had not in any way affected the principle referred to. Wallington, J., had been right in refusing the wife's application, and the appeal should be dismissed.

BIRKETT, L.J., agreed.

APPEARANCES: *W. Latey*, K.C. (*Rider, Heaton, Meredith and Mills* for *Bellyse & Eric Smith*, Nantwich); *H. V. Brandon* (*Robinson & Bradley* for *A. E. Whittingham & Son*, Nantwich).

[Reported by R. C CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

PARTIAL INTESTACY: BRINGING PORTIONS INTO HOTCHPOT

***In re* Young; Young *v.* Young**

Harman, J. 25th October, 1950

Adjourned summons.

By a will dated 25th February, 1938, the testator directed his trustees to hold the residue of his estate on trust to pay the income to his wife for life, and after her death to hold five-sevenths of the residue in trust for five of his children in equal shares. He further directed that the income or capital of one-seventh share should be paid or applied at the discretion of the trustees for the maintenance of X, another of his children, or any of the latter's children, during his life; and after X's death the unapplied surplus of the one-seventh share should be distributed equally between his children. As regards the remaining one-seventh share, similar trusts were directed in favour of Y, another of the testator's children, and his issue. Y died on 20th May, 1936, i.e., a considerable time before the date of the will, without leaving issue. The testator died on 9th January, 1939, X died on 26th January, 1939, leaving two children who succeeded to his seventh share, and the testator's widow died on 21st July, 1948. The court was asked to decide whether on the distribution of Y's one-seventh share—in respect of which the testator had died intestate—X's personal representative was liable to bring into account the capital of the one-seventh share left to X and his children or whether X's estate was entitled to share in Y's one-seventh share without bringing anything into hotchpot.

HARMAN, J., said that under the old law there would not have been any difficulty. The Statute of Distribution (22 & 23 Cha. 2, c. 10) which involved the bringing in of portions on an intestacy, did not apply to a partial intestacy, and the one-seventh share of Y would have been divided among the next of kin. The legislation had, however, been altered by the Administration of Estates Act, 1925. After considering s. 47 (1) (iii) and s. 49 of that statute, he (the learned judge) came to the conclusion that the beneficial interest which X and his children had acquired must be brought into account.

APPEARANCES: *Winterbotham* (*Butt & Bowyer*, for *J. F. Latimer & Hinks*, Darlington); *G. A. Grove*, *R. S. Lazarus*, *Lightman* (*Torr & Co.*, for *A. R. Beavon & Littleford*, Wolverhampton; *Wrinch & Fisher* for *Freeman, Son and Curry*, Darlington).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

PRACTICE NOTE

TAXATION OF COSTS

FORM OF BILLS—PROBATE AND DIVORCE DIVISION—ASSISTED PERSONS

17th November, 1950.

Solicitors' bills of costs should be prepared in " 4-column " style on foolscap as under :—

Taxed off (Solicitor and Client)	Taxed off (Party and Party)	Date and item	Solicitor and Client		Party and Party	
			Disbursements	Profit Costs	Disbursements	Profit Costs

The Solicitor and Client columns should show only those items which do not appear in the Party and Party Columns.

After taxation separate summaries for the two sets of columns should be completed. The sum of the two totals will give the Solicitor and Client costs.

The allocatur and order (payable to the party c/o the solicitor) in respect of Party and Party costs will follow present practice.

An allocatur in the form :—

" I certify that the costs in this cause have been taxed as between solicitor and client and amount to :—

Disbursements	£
Counsel's Fees	£
Profit Costs	£
Total	£

Dated this day of 19 .

Registrar."

will be given in respect of the full taxed Solicitor and Client costs. A copy (fee 5s.) may be bespoken, and will be required by The Law Society as authority to pay the sums due from the Legal Aid Fund. The costs of obtaining this copy may be included in the Solicitor and Client bill.

H. A. DE C. PEREIRA,
Senior Registrar.

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Expiring Laws Continuance Bill [H.C.] [14th November.

Penicillin (Merchant Ships) Bill [H.L.] [14th November.

To amend the Penicillin Act, 1947, for the purpose of enabling penicillin and certain other substances and preparations to be sold or supplied to, and administered on board, merchant ships.

Read Second Time :—

Glasgow Corporation Sewage Order Confirmation Bill [H.C.] [14th November.

Read Third Time :—

Kirkcaldy Burgh Extension, &c., Order Confirmation Bill [H.C.] [14th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Colour Bar Bill [H.C.] [17th November.

To make illegal any discrimination to the detriment of any person on the basis of colour or race.

Common Informers Bill [H.C.] [17th November.

To abolish the common informer procedure.

Deserted Wives Bill [H.C.] [17th November.

To give power to the courts to transfer the statutory tenancy of a dwelling to a deserted wife and to apportion the chattels.

Fireworks Bill [H.C.] [17th November.

To confer powers of seizure where dangerous fireworks are found, and powers to determine or amend licences or certificates for explosives factories where fireworks are made, and to amend the law relating to licences for small firework factories ; and for purposes connected with the matters aforesaid.

Fraudulent Mediums Bill [H.C.] [17th November.

To repeal the Witchcraft Act, 1735, and to make, in substitution for certain provisions of section four of the Vagrancy Act, 1824, express provision for the punishment of persons who fraudulently purport to act as spiritualistic mediums or to exercise powers of telepathy, clairvoyance or other similar powers.

Gas Undertakings (Scotland) Bill [H.C.] [17th November.

To set up in Scotland a Central Gas Council directly responsible to the Secretary of State with powers subject to his consent to redraw the areas of supply ; to transfer to local authorities gas undertakings in their area by mutual arrangement ; and in other respects to reorganise the gas industry in Scotland.

Hill Farming Bill [H.C.] [17th November.

To amend s. 10 of the Hill Farming Act, 1946, and for purposes connected therewith.

Matrimonial Causes Bill [H.C.] [17th November.

To amend the law relating to divorce in cases in which the parties have lived separately for a period of not less than seven years.

National Insurance (Amendment) Bill [H.C.] [17th November.

To amend certain provisions of the National Insurance Act, 1946.

New Streets Bill [H.C.] [17th November.

To secure the satisfactory construction, lighting, sewerage, furnishing and completion of streets adjacent to new buildings ; to provide for the approval of such streets by local authorities ;

to make such approval a condition of certain licences and permissions, and to oblige and empower local authorities to adopt streets so approved.

Packaging and Handling of Food Bill [H.C.] [17th November.

To make provision for the regulation and control of the manner in which food for human consumption shall be packed, and to regulate the manner in which it may be handled during the process of manufacture, merchanting and sale.

Pet Animals Bill [H.C.] [17th November.

To regulate the sale of pet animals.

Public Bodies (Admission of Press) Bill [H.C.] [17th November.

To provide for the admission of the Press to the meetings of certain bodies exercising public functions; and for related purposes.

Public Works Loans Bill [H.C.] [13th November.

To grant money for the purpose of certain local loans out of the Local Loans Fund, and for other purposes relating to local loans.

Reinstatement in Civil Employment Bill [H.C.] [15th November.

To make further provision for the reinstatement in civil employment of persons who have served whole-time in the armed forces of the Crown, and for safeguarding the employment of persons liable to serve as aforesaid; and for purposes connected with the matters aforesaid.

Representation of the People (Amendment) (No. 1) Bill [H.C.] [17th November.

To amend s. 88 of the Representation of the People Act, 1949, with regard to the use of motor vehicles for conveying electors to the poll.

Representation of the People (Amendment) (No. 2) Bill [H.C.] [17th November.

To amend the provisions of the Representation of the People Act, 1949.

Rivers (Prevention of Pollution) Bill [H.C.] [15th November.

To make new provision for maintaining or restoring the wholesomeness of the rivers and other inland or coastal waters of England and Wales in place of the Rivers Pollution Prevention Act, 1876, and certain other enactments.

Rivers (Prevention of Pollution) (Scotland) Bill [H.C.] [17th November.

To make new provision for maintaining or restoring the wholesomeness of the rivers and other inland or coastal waters of Scotland in place of the Rivers Pollution Prevention Act, 1876, and certain other enactments.

Salmon and Freshwater Fisheries (Protection) (Scotland) Bill [H.C.] [15th November.

To amend the law in regard to the protection of salmon and freshwater fish in Scotland, including the whole of the River Tweed, and for purposes connected therewith.

Security of Employment (Service Contracts) Bill [H.C.] [17th November.

To entitle certain wage earners to a statement setting out the conditions of their employment and the terms upon which, if their employment is terminated, they shall be compensated.

Slaughter of Animals (Amendment) Bill [H.C.] [17th November.

To extend the provisions of the Slaughter of Animals Act, 1933, and implement certain recommendations of the Departmental Committee on the export and slaughter of horses.

Trade Union Bill [H.C.] [17th November.

To prohibit local and other public authorities from making membership or non-membership of a trade union a condition of employment and of continuance in employment.

Transport (Amendment) Bill [H.C.] [17th November.

To amend the provisions of the Transport Act, 1947, with regard to the transport of goods by road.

Read Second Time :—

Dangerous Drugs (Amendment) Bill [H.C.] [14th November.

European Payments Union (Financial Provisions) Bill [H.C.] [16th November.

Exchequer and Audit Departments Bill [H.C.] [14th November.

Superannuation Bill [H.C.] [14th November.

Read Third Time :—

Colonial Development and Welfare Bill [H.C.] [17th November.

Restoration of Pre-War Trade Practices Bill [H.C.] [17th November.

Solicitors Bill [H.C.] [17th November.

B. Questions

Sir Hartley Shawcross said that the Lord Chancellor was of the opinion that it was undesirable for many reasons that the names of candidates for appointment to the commissions of the peace should be prematurely published, but he had no power to prevent such publication by independent bodies. The Lord Chancellor had no objection to any organisation, political or otherwise, suggesting to his advisory committees the names of persons considered to be suitably qualified for appointment as justices. If an advisory committee, after considering all the relevant circumstances, recommended a candidate as being in every respect suitable for the office of justice of the peace, the Lord Chancellor would not decline to accept the recommendation solely on the ground that the name of the candidate had already been published as having been recommended by a particular organisation. [13th November.

Mr. Chuter Ede said the question of whether an appeal committee of quarter sessions should have a shorthand note taken of its proceedings was a matter for the appeal committee. The decisions of appeal committees on appeals from decisions of courts of summary jurisdiction were final on matters of fact, and the only appeal was by way of case stated on a point of law. Such appeals were infrequent and seldom involved a minute consideration of the evidence. He was not satisfied on the evidence at present before him that the legislation which would be needed to require appeal committees to have a shorthand note taken in all cases would be justified. [13th November.

The Minister of Health said it had been noted that hardship was sometimes imposed on the tenants of small houses built on Crown lands who were not protected by the Rent Restrictions Acts, and the matter would be considered when the Rent Restrictions Acts were reviewed. Meanwhile, he was prepared to authorise the exercise of requisitioning powers by local authorities in appropriate cases in order to avoid the creation of hardship. [16th November.

Mr. Herbert Morrison stated that appeal now lay to the Judicial Committee of the Privy Council from the Dominions of Australia, New Zealand and Ceylon, and also from Canada from judgments pronounced in judicial proceedings which commenced before 23rd December, 1949. [16th November.

STATUTORY INSTRUMENTS

Draft **Double Taxation Relief** (Taxes on Income) (Sarawak) Order, 1950.

Food (Licensing of Wholesalers) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1798.)

Import Duties (Exemptions) (No. 10) Order, 1950. (S.I. 1950 No. 1797.)

Isles of Scilly (National Health Service) Order, 1950. (S.I. 1950 No. 1835.)

London Traffic (Grand Union Canal Bridge, Slough) Regulations, 1950. (S.I. 1950 No. 1807.)

Draft **Metalliferous Mines** (Amendment) General Regulations, 1950.

Milk (Control and Maximum Prices) (Great Britain) (Amendment No. 3) Order, 1950. (S.I. 1950 No. 1800.)

Milk and Dairies (Delegation to County Agricultural Executive Committees) (Amendment) Regulations, 1950. (S.I. 1950 No. 1818.)

National Health Service (Executive Council for the Isles of Scilly) Amendment Regulations, 1950. (S.I. 1950 No. 1836.)

Draft **Quarries** (Electricity) (Amendment) General Regulations, 1950.

Retail Newsagency, Tobacco and Confectionery Trades Wages Council (England and Wales) Wages Regulation (No. 2) Order, 1950. (S.I. 1950 No. 1817.)

Retention of Main and Cables under and over Highways (Cumberland) (No. 1) Order, 1950. (S.I. 1950 No. 1808.)
Sandown Water Order, 1950. (S.I. 1950 No. 1816.)
Stockfeed Potatoes (Revocation) Order, 1950. (S.I. 1950 No. 1799.)
Stopping up of Highways (Berkshire) (No. 1) Order, 1950. (S.I. 1950 No. 1812.)
Stopping up of Highways (Berkshire) (No. 2) Order, 1950. (S.I. 1950 No. 1824.)
Stopping up of Highways (Berkshire) (No. 3) Order, 1950. (S.I. 1950 No. 1825.)
Stopping up of Highways (Cumberland) (No. 4) Order, 1950. (S.I. 1950 No. 1822.)
Stopping up of Highways (Durham) (No. 5) Order, 1950. (S.I. 1950 No. 1811.)
Stopping up of Highways (Huntingdonshire) (No. 2) Order, 1950. (S.I. 1950 No. 1821.)
Stopping up of Highways (Lincolnshire—Parts of Kesteven) (No. 1) Order, 1950. (S.I. 1950 No. 1819.)
Stopping up of Highways (Lincolnshire—Parts of Lindsey) (No. 2) Order, 1950. (S.I. 1950 No. 1820.)
Stopping up of Highways (Worcestershire) (No. 4) Order, 1950. (S.I. 1950 No. 1823.)
Telegraph (Inland Written Press Telegrams) Regulations, 1950. (S.I. 1950 No. 1810.)
Telegraph (Inland Written Telegram) Regulations, 1950. (S.I. 1950 No. 1809.)
Tuberculosis (Attested Herds) Amendment Scheme, 1950. (S.I. 1950 No. 1803.)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope

Intestacy—Redemption of Widow's Interest in Half the Residuary Estate

Q. We are acting for the administrators of a deceased person's estate where it is desired to exercise the power conferred by s. 48 (1) of the Administration of Estates Act, 1925, to redeem the widow's life interest in half the residuary estate, and we find that the following difficulties arise: (1) It appears to be necessary in the first instance to estimate the annual income which could be expected to be obtained if the capital sum were invested in trustee securities. Are we correct in thinking that the proper course to adopt would be to obtain an estimate from a stockbroker, or what other course would you suggest? (2) Having obtained an estimate of the annual income, tables would have to be selected for the purpose of ascertaining the capital value of the life interest. We shall be glad to know whether the tables in the Succession Duty Act, 1853, should be used, or can you refer us to any other appropriate tables?

A. (1) In the case of an intestacy there is an express trust for sale and conversion of the residuary estate (Administration of Estates Act, 1925, s. 33). The rule in *Howe* v. *Lord Dartmouth* (1802), 7 Ves. 137, applies to the income after the expiration of one year from the death of the intestate. Accordingly, the income to which the widow would be entitled should be worked out either by applying the notional Consol rule or the 4 per cent. rule. Under the former, the capital of the share is considered as invested in Consols at the price ruling at the expiration of one year from the death and the amount of income which such investment would produce is that to which the widow is entitled. Under the 4 per cent. rule the income is taken at 4 per cent. on the capital value, and it is this rule which is normally employed (see *Re Parry* [1947] Ch. 23; *Re Fawcett* [1940] Ch. 402), and should, we consider, be employed here. There is no need to obtain actual income figures from stockbrokers. (2) Having ascertained the income on the 4 per cent. basis, the capital value of a life annuity for this amount should be calculated from the latest life assurance office tables. These can be found in *Whitaker's Almanack*. The Succession Duty Act tables are unsuitable, since people now live longer than they did in 1853, and the use of these tables would undervalue the life interest.

Estate Duty on Gifts within Five Years of Death—Regular Annual Gifts

Q. If A makes gifts to his children every year continuously during his lifetime of stocks not exceeding in value sometimes £1,000 and at other times £500, and cash in sums not exceeding £500 for maintenance, to what extent will these stocks and money be liable to estate duty if made within five years of his death?

A. The law on the subject of gifts *inter vivos* is substantially contained in the Finance Act, 1894, s. 2 (1) (*c*), the Customs and Inland Revenue Act, 1881, s. 38 (2) (*a*) (as amended by the Customs and Inland Revenue Act, 1889, s. 11 (1)), the Finance (1909–10) Act, 1910, s. 59, the Finance Act, 1946, s. 47 and Sched. XI, Pt. I, para. 1, and the Finance Act, 1949, s. 33. The question propounded relates only to gifts within five years of death, and in the case of such gifts (subject to particular exceptions not here applicable) the property given is deemed to pass on the death, and attracts estate duty accordingly, unless—

(i) in consideration of marriage; or
(ii) proved to the satisfaction of the Inland Revenue Commissioners to have been part of the normal expenditure of the deceased donor and to have been reasonable having regard to the size of his income and other circumstances; or
(iii) falling within one of three other general exceptions, which clearly do not here apply owing to the size or nature of the gifts received by each child.

Presumably the questioner has in mind (ii) above. The size of the gifts is not so large that they could not come within the exception. Whether or not the exception can apply depends entirely on the facts and in particular on whether the gifts are all made out of income. Gifts made out of capital would not be accepted as normal expenditure. See the Finance (1909–10) Act, 1910, s. 59 (2).

It should be remembered that in the case of the gifts of stocks the value falls to be ascertained at the date of death for the purpose of ascertaining the estate duty payable, but the value at the date of gift is of importance in deciding whether the gifts are normal expenditure. Gifts of property can come within the exception, but the property must have been purchased by the donor out of current income, or received by the donor as current income (e.g., bonus shares).

Family Provision—Imbecile Child

Q. We have been instructed to prepare a will on behalf of a client who has an imbecile child and we advised that, in view of the Inheritance (Family Provision) Act, provision should be made for the maintenance of this child during the child's life. Our client is under the impression that there is no necessity to provide for this child in view of the provisions of the National Health Service Act, 1946. So far as we can find that Act contains no provision for relieving a parent from responsibility for the maintenance of his children and, in fact, s. 42 of the National Assistance Act, 1948, explicitly states that a parent shall be responsible to maintain his or her spouse and children: and further s. 24 of the Children Act, 1948, specifically declares that parents of a child shall be liable to make contributions in respect of the child up to the age of 16 years.

A. Apart from the Inheritance (Family Provision) Act, 1938, modern English law makes no provision for parental responsibility for the maintenance of children after the parent's death, and prior to the coming into operation of the above Act a person was entitled to bequeath his estate where he chose without consideration for the needs of any of his dependants. The Poor Law Act, 1930 (replacing earlier legislation), provided for liability of persons for maintenance of their indigent near relations, but this liability ceased on death and no liability rested upon the estate of any person who might have been liable during his lifetime. The 1930 Act is repealed by the National Assistance Act, 1948, under which the liability to maintain is restricted to the duty of a parent towards children under sixteen years of age. The practical result is that the imbecile child will be maintained and cared for under the National Health Service Act, 1946, and the National Assistance Act, 1948, without any contribution from the estate of the deceased parent. It will, however, be open to the child (through the Official Solicitor) to apply for reasonable maintenance under the Inheritance (Family Provision) Act, 1938. In this connection the recent decision in *Re Watkins* [1949] 1 All E.R. 695 is of value. In that case the testator had during his lifetime been paying the sum of £250 per annum for the maintenance of his daughter in a private mental home. In his will he referred to the provisions of the National Health Service Act, 1946, and provided his daughter with an annuity of £72 per

annum. Although this would not have been adequate for her maintenance otherwise than under the 1946 Act and there were sufficient funds available, the court refused to make an order under the 1938 Act. In our opinion, therefore, it will be sufficient if the present testator makes a provision for the imbecile child sufficient to purchase extra comforts, unless there is a real prospect of recovery, when more liberal provision perhaps ought to be made and possibly postponed until recovery.

Memorandum of Deposit of Documents with Bank—
RELEASE ON CONVEYANCE

Q. We are acting for a purchaser of a house on a building estate, the vendors being a limited company. The vendor company has executed a memorandum of deposit of documents relating to the whole estate with a bank, such charge being registered at the Companies Registry. Is a letter signed by the branch manager of the bank to the effect that the bank has no charge on the house being sold sufficient to release it from the memorandum, or should the bank be joined in the conveyance to the purchaser? The bank's charge will not be paid off on completion of the purchase. We may say that the vendors' solicitors contend that the letter mentioned above is sufficient.

A. In the case of an equitable mortgage accompanied by a memorandum of deposit no legal estate vests in the mortgagee and no reconveyance is required. It is accordingly not usual for banks either to join in the conveyance or to execute a separate release under seal unless they have taken a legal mortgage, and in practice the letter suggested by the vendors' solicitors is invariably accepted. The only doubt which arises is whether the vendors can give an effective acknowledgment for production of documents, since these are in the possession of the bank and not in the possession of the vendors. It is, however, usual to accept the vendors' acknowledgment, since in any event the purchaser will have an equitable right to production and a subsequent purchaser is bound to accept this as sufficient. As to the matter generally, see Emmet on Title, 13th ed., vol. I, pp. 159–160.

NOTES AND NEWS

Miscellaneous

CLAIMS ON THE £300m.

CONTRIBUTIONS TOWARDS PROFESSIONAL FEES

The Central Land Board's contribution towards professional fees incurred in making a claim under the Town and Country Planning Act, 1947, will be sent to the claimant "care of" the agent whose name and address was given in answer to question 2 of the claim form S.1.

As stated in the Board's announcement of 11th October, 1950, the contribution is payable as soon as possible after the determination has become final, provided the conditions set out in para. 16 of the Board's pamphlet S.1.A are satisfied.

In the article "Costs: Admiralty—II" which appeared in last week's issue at p. 735, third paragraph, line 15, for "4s." read "4d."

OBITUARY

MR. A. W. BARTLETT

Mr. Arthur Wilson Bartlett, solicitor, of Lincoln's Inn, died on 14th November, aged 80. He was admitted in 1892.

MR. R. A. HOLDEN

Mr. Ralph Ainsworth Holden, solicitor, of John Street, Bedford Row, died on 16th November, aged 70. He was admitted in 1905.

SOCIETIES

At the annual general meeting of the BROMLEY AND DISTRICT LAW SOCIETY, held on the 24th October, 1950, the following were elected officers for the year 1950–51: President, Mr. Cyril E. Latter; Vice-Presidents, Messrs. C. Eric Staddon, O.B.E., and J. W. Willett; Hon. Treasurer, Mr. C. Denis Gregory, M.C.; Hon. Secretary, Mr. Philip Lee, 72 Beckenham Road, Beckenham, Kent; Committee, Messrs. Stanley O. Matthews (retiring President), R. D. Birrell, L. Kaye, G. H. Kirby-Smith, R. S. Miller, C. J. de S. Root, P. S. Stowe and W. G. Weller. In his report on the Society's work for the past year, the retiring President emphasised the important part local law societies must play in the administration of the Legal Aid Scheme and urged members to join Local Certifying Committees.

SOLICITORS' BENEVOLENT ASSOCIATION

ANNUAL GENERAL MEETING

The annual general meeting of the members of the SOLICITORS' BENEVOLENT ASSOCIATION was held at 60 Carey Street, London (by kind permission of the Council of The Law Society), on Thursday, 26th October, 1950.

The Chairman, Mr. Guy S. Blaker (Henley-on-Thames), presided. After he had extended a welcome to the Vice-President of The Law Society, Mr. G. A. Collins, it was agreed that the annual report and accounts for the year ended 30th June, 1950, which had been circulated, be taken as read.

In his speech which followed, the Chairman drew the attention of members to the fact that grants and annuities to over 330 beneficiaries had again exceeded the £30,000 mark. He did not propose to take up the valuable time of those present with particulars of the applications for relief dealt with during the year; some of these had been referred to by the secretary in her reports of the monthly meetings of the Board, so that the profession had been able to see for itself the excellent work the Association was doing. As it was not the policy of the directors to cut down grants unless for some special reason, much help was needed. It was, therefore, regrettable that the membership of the Association had not yet reached the half-way figure of 16,500 or so practising solicitors in England and Wales. The subscription was still only one guinea a year. He took this opportunity of thanking the immediate past President of The Law Society, Sir Nevil Smart, for the interest he had shown in personally signing a letter to each newly qualified solicitor, urging him to become a member of the Association, and those directors and others who had obtained new members by personal appeal. It was, he continued, good news that more and more members are paying their subscriptions under deeds of covenant, as this was, of course, of considerable benefit to the Association. The Chairman moved the adoption of the report and accounts, which was seconded by the Vice-Chairman, Mr. Gerald Russell, and carried.

A vote of thanks to the Chairman for presiding at the meeting and for his able work during the past year was moved by Mr. G. F. Pitt-Lewis, London.

PRINCIPAL ARTICLES APPEARING IN VOL. 94

7th October to 25th November, 1950

List of articles published earlier this year appear in the Interim Index (to 1st July) and at p. 628, ante (8th July to 30th September).

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